United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

76-7463

United States Court of Appeals
FOR THE SECOND CIRCUIT

FOOTNER & CO., INC., et al.,

Plaintiffs,

against

SS AMAZONIA, her engines, etc. COMPANHIA DE NAVEGACAO MARITIMA NETUMAR, et al.,

Defendant-Appellant and Third-Party Plaintiff,

and against

NEW JERSEY EXPORT MARINE CARPENTERS INC.,

Third-Party Defendant-Appellee.

COMPANHIA DE NAVEGACAO MARITIMA NETUMAR,

Plaintiff-Appellant,

against

UNITED TERMINALS, INC.,

Defendant,

NEW JERSEY EXPORT MARINE CARPENTERS, INC.,

Defendant-Appellee.

JOINT APPENDIX

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UNITED STATES COURT OF APPEALS
FILED
JAN 3 1977
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SECOND CIRCUIT

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CIVIL DOCKET

UNITED STATES DISTRICT COURT

JUDGE OWEN

72 CIV. 2402

FOOTNER & CO., INC., ET AL.,

Plaintiffs,

against

S.S. AMAZONIA, her engines, boilers, etc., COMPANHIA de NAVEGACAO MARITIMA NETUMAR and T. J. STEVENSON & CO., INC.,

Defendants.

DATE	PROCEEDINGS
6- 5-72	FILED COMPLAINT. ISSUED SUMMONS.
Nov. 13-72	Filed deft & third party pltffs, third party complaint.
Nov. 13-72	Filed deft Companhia de Navegacao Maritima, Netumar ANSWER to the complaint. C&C&
Feb. 14-73	Filed third party deft. Jersey Export Marine Carpenters ANSWER to third party complaint. McHS&L
Jul. 10-73	Filed interrogs of United Terminals, Inc. propounded to third party deft New Jersey Export Marine Carpenters, Inc.
Dec. 14-73	Filed deft. New Jersey Export Marine Caprenters Inc. answers to deft. United Terminals, Inc. interog.
12/14/73	PRE-TRIAL CONFERENCE HELD BY MAG. HARTENSTINE.
Jan. 25-74	Filed defts. and 3pty. pltfs. reply to 3pty. deft's. counterclaims.

Relevant Docket Entries.

DATE	PROCEEDINGS
Jan. 28-74	Filed defts. Companhia De Navegacao Maritima, Netumar ANSWER to complaint and counterclaims. C&C
2/28/74	pre-trial before OWEN, J.
Aug 14.74	Filed Order that the action 72 Civ 2402 & 74 Civ 438 are consolidated for all purposes. Owen J. (mailed notice)
12-12-74	PRE-TRIAL CONFERENCE H[illegible] BY HARTENSTEIN
4- 2-75	Pre Trial Conference held by Owen J.
11/10/75	PTC HELD, OWEN, J.
01-19-76	Before Owen, J. non-jury trial begun.
01-21-76	Trial continued. Motion by Deft. United Terminals Inc. to dismiss complaint as to them is granted.
01-26-76	Trial continued and concluded. Decision Reserved.
7-23-76	Filed Opinion # 44826. The causes of action of Netumar against New Jersey Export Marine Carpenters Inc. are therefore dismissed. Submit Judgment on notice. Owen J (M/N)
08-20-76	Filed Judgment that the complaint & 3rd Pty complaint of Companhia de Navegacao Maritime, Netumar, against United Terminals, Inc. and New Jersey Export Marine Carpenters, Inc. are dismissed with costs to be taxed by the Clerk in favor of United Terminals, Inc. and New Jersey Export Marine Carpenters, Inc. . . . Owen, J. Judgment Entered 8-20-76 . . . Clerk. Entered 8-25-76. (mailed notice) (also in 74 Civ. 438)
09-14-76	Filed Deft. & 3rd Pty Pltff's. (Companhia De Navegacao) notice of appeal from the judgment Entered on 8-20-76. (mailed notice) (also in 74 Civ. 438)

Relevant Docket Entries.

CIVIL DOCKET

UNITED STATES DISTRICT COURT

JUDGE OWEN

74 CIV. 438

COMPANHIA DE NAVEGACAO MARITIMA, NETUMAR,

Plaintiff,

against

UNITED TERMINAL INC., NEW JERSEY EXPORT MARINE CARPENTERS, INC.

Defendants.

DATE	PROCEEDINGS
Jan. 25-74	Filed Complaint and issued summons.
Feb. 27-74	Filed ANSWER of deft. New Jersey Export Marine Carpenters, Inc. to the complaint. MCH, H, S&L
Aug 14.74	Filed Order that the actions 72 Civil 2402 & 74 Civil 438 are consolidated for all purposes. Owen J. (mailed notice) (Filed in 72 Civil 2402)
01-19-76	Before Owen, J. non-jury trial begun.
01-21-76	Trial continued. Motion by Deft. United Terminals Inc. to dismiss complaint as to them is granted.
01-26-76	Trial continued & concluded. Decision Reserved.

Relevant Docket Entries.

DATE	PROCEEDINGS
08-20-76	Filed Judgment that the complaint & 3rd Pty complaint of Companhia de Navegacao Maritima, Netumar, against United Terminals, Inc. and New Jersey Export Marine Carpenters, Inc. are dismissed with costs to be taxed by the Clerk in favor of United Terminals, Inc. and New Jersey Export Marine Carpenters, Inc. . . . Owen, J. Judgment Entered 8-20-76 . . . Clerk. Entered 8-25-76. (mailed notice) (filed in 72 Civ. 2402)
09-14-76	Filed Deft. & 3rd Pty Pltff's. (Companhia De Navegacao) notice of appeal from the judgment entered on 8-20-76. (mailed notice) (filed in 72 Civ. 2402)

Opinion.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OWEN, District Judge

Involved herein are two causes of action consolidated and tried to the Court without a jury. The M.V. Amazonia, on a voyage from New York to Brazil, had its hull punctured below the water line by a tractor that broke from its lashings in a storm. It almost sank north of Bermuda whence it fortunately limped for repairs.

The vessel compromised the cargo damage claims and in this proceeding sues for said sums paid and for damage to the vessel iself. Only the issue of liability was tried before me. The defendants were the stevedores, United Terminals, Inc., and the lashers of the offending tractor, New Jersey Export Marine Carpenters, Inc. At the close of the plaintiffs' case, I dismissed the action as against the stevedore, United.

The Amazonia was a diesel powered motor vessel registered under the Brazilian flag, some 400 feet in length, with three cargo holds, and at the time in question was operated by Netumar,[1] in general cargo service between ports in Brazil and on the east coast of the United States and Canada. In January 1971 it arrived at New York, having loaded and discharged cargo in Jacksonville, Baltimore, Philadelphia and St. John's (Canada). In New York, among other items, there were loaded and lashed in position two 17-ton Terex tractors, which were placed in the No. 2 'tween deck. The loading was done by United and the lashing by New Jersey Export. The tractors had the buckets removed from the two steel arms protruding from the front of each tractor. They were placed athwart ship,

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[1] Netumar is a third-party plaintiff in one action and plaintiff in the other. In this opinion it is referred to only as "plaintiff."

each with its arms facing the shell of the vessel. The two tractors were lashed to each other by wires between the rear axles.

The vessel departed for Brazilian ports on January 18, 1971 and by January 19 found itself in increasingly heavy weather. According to its log, the seas on January 19th and 20th were of such condition and from such interminate directions as to cause the vessel to violently roll. The sea came over the deck and hatches, eventually breaking part of the lashing of the starboard side deck containers. Eventually, the vessel was rolling as much as 28°, and was being controlled manually. In order to try to minimize this heavy rolling, the vessel changed course a number of times but without alleviating the problem. During the course of this heavy rolling, the Terex tractor stowed to starboard in the No. 2 'tween deck broke loose and began to batter the starboard shell of the vessel until eventually its two bucket arms punctured two substantial holes in the side of the vessel below the water line. No. 2 hold filled with water, some of which spilled into another hold through a ventilating system. The ingress of water was so great that, although the seas at some point thereafter abated, the vessel almost sank. Needless to say, much of the cargo was ruined, and particularly all of the cargo in the No. 2 hold.

Amazonia contends that the Terex came loose because it was improperly lashed by New Jersey Export. Export contends that, at a minimum, the proof shows proper lashing, and that it being impossible to tell on this record how or why the Terex broke loose, plaintiff has failed in its burden of proof. Export, in addition, goes further urging that the vessel was negligently handled in a storm situation, that the wire cargo lashings were not adequately checked to take up slack that always develops on a voyage.[2] It contends that the vessel suffered a fire and

that this fire so absorbed the energies of the crew that they were inattentive to any movement of the cargo and the early obvious "banging" signs of the Terex being loose.[3]

In any event, there is utterly no question that the vesse went through a dreadful storm situation. The pictures of the No. 2 'tween deck show a chaotic scene with heavy rolls of newsprint jumbled about. One picture, in particular, showing one of the tractors lying upside down in the jumble of fragmented rolls of newsprint, indicates some superforce throwing it into that position. All of this speaks of violent motion of the vessel over a prolonged period of time.[4] In any event, I find that the tractors were properly lashed, with suitable materials, by Export in New York. I find that this lashing was checked by a representative of the vessel owner, National Cargo Bureau, Inc., and a certificate given confirming the propriety of the said lashings.[5] As noted earlier, there was obviously a

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[2] It points to the fact that but one such inspection was made by the crew some eighteen hours out of port.

[3] Export also urges the Chief Mate in charge of cargo was ill and unable to effectively attend to his duties. This fact is not contested.

[4] The effects of the storm were apparently worsened by the fact that the vessel had its weight improperly distributed upon departure making it a "stiff ship" with a consequent snap of the vessel at the end of each roll, obviously aggravating the shifting of any cargo in the vessel, particularly for example, rolls of newsprint laid one atop of another, held in position by wooden cribbing (for which New Jersey Export was not responsible, the cargo being loaded at another port).

[5] Amazonia seeks to avoid the impact of this certificate by contending that the inspector's notes show that the No. 2 hold was closed and had containers on it by the time he made said inspection, and therefore he could not have inspected the lashings of any cargo in the No. 2 'tween deck. This argument is of little weight since the log reveals that the ship's personnel, eighteen

(footnote continued on following page)

dreadful storm that shook the vessel unmercifully. During the course of this, there is substantial evidence that there was a fire on the vessel.[6] It is also obvious that either the fighting of the fire or the problems with the management of the vessel in the heavy seas was such as to make the entire crew, including the engine room staff, pay no attention to the pounding of the tractor on the starboard shell. It is also revealed by the log[7] that after checking the lashings of the cargo eighteen hours out of New York and apparently finding them in good order, no one checked the rolls of newsprint or the tautness of the lashings of the Terex in the No. 2 hold at any time thereafter as the storm began and the vessel started to roll severely.

On this record I conclude that it is impossible to tell why the Terex broke loose. Any number of things could have happened. Rolls of newsprint could have gotten loose, the crew could have failed to take up the slack that developed in the Terex's cables, and the severe "snap" rolling broke them. Other cargo could have shifted and knocked out the chocking under and around the wheels. In any event, the Amazonia has not met its burden of proving the cause of the Terexes getting loose and one of them

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(footnote continued from preceding page)

hours out of port, went through the entire vessel checking the lashings, obviously having access to the No. 2 'tween deck through appropriate internal doors, which presumably were equally available to the National inspector. Indeed, one would be astonished if a National inspector would give, or the vessel would accept, an unqualified certificate where an inspector could not get in to view major items of cargo and the quality of their lashings which were critical to the vessel's safety.

[6] I note that the master of the vessel in his report at the end of the voyage criticized the absence of fire fighting skills among his crew.

[7] The vessel's logs are subject to substantial question because of the absence of items one would expect to find, given the entire picture presented.

puncturing the side of the vessel. That, coupled with my finding that the Terexes were properly lashed, is dispositive of the issues herein. The causes of action of Netumar against New Jersey Export Marine Carpenters, Inc. are therefore dismissed.

So Ordered. Submit judgment on notice.
July 22, 1976.

RICHARD OWEN
United States District Judge

Judgment.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

This action having been consolidated for all purposes by order dated August 13, 1974, and having come on for trial before the court without a jury, Honorable Richard Owen, District Judge, presiding, on January 19, 20, 21 and 26, 1976, solely on the issue of liability, and the case against third-party defendant, United Terminals, Inc. having been dismissed at the end of the case of plaintiff and third-party plaintiff, Companhia de Navegacao Maritima, Netumar, and the trial having continued against third-party defendant, New Jersey Export Marine Carpenters, Inc., and the evidence adduced by the parties having been heard, and the court having rendered an opinion numbered 44826 dated July 22, 1976, and filed in the Office of the Clerk of this Court on July 23, 1976, dismissing the causes of action of Companhia de Navegacao Maritima, Netumar, against New Jersey Export Marine Carpenters, Inc., and that there being no just reason for delay of entry of this judgment, pursuant to Rule 54(b), of the F.R.Civ.P.,

Judgment.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the complaint and third-party complaint of Companhia de Navegacao Maritima, Netumar, against United Terminals, Inc. and New Jersey Export Marine Carpenters, Inc. be and hereby are dismissed with costs to be taxed by the Clerk in favor of United Terminals, Inc. and New Jersey Export Marine Carpenters, Inc.

Dated: New York, New York
August 2, 1976.

RICHARD OWEN
U.S.D.J.
MA

JUDGMENT ENTERED 8/20/76
RAYMOND F. BURGHARDT
Clerk

A 11

IR-1[illegible]-7-69

EXHIBIT 7--DOCK RECEIPT

DELIVERY INSTRUCTIONS FOR GOODS ITEMIZED AND DESCRIBED BELOW

O | TX | F | FS | SCS

GENERAL MOTORS OVERSEAS OPERATIONS
DIVISION OF GENERAL MOTORS CORPORATION
767 FIFTH AVENUE, NEW YORK, N. Y. 10022

ORDER NO. GM

J MORRISS PHONE 486-5000 DATE 1-8-71

DELIVERING CARRIER PENN-CENT

PLEASE DELIVER TO: NETUMAR

PLEASE DELIVER THE UNBOXED MOTOR VEHICLES DESCRIBED BELOW:

B/S AMAZONIA 1/14

NOW AT GREENVILLE PIERS

PIER 36 EAST RIVER

EXPORT LICENSE NO.

DELIVER ON 1/13 DOCK RECEIPT ATTACHED ON DOCK

EXPORT DEC. NO.

EX CAR	DISP	EXC	NO. UNITS	MODEL DESCRIPTION	GROSS POUNDS	CUBE
MTTX90250	12/1	650415/16	2	TEREX 72-51 TRACTORS	34000	3061-3
				224" x 144" x 164"	EA.	EA.
			2	BUCKETS	2000	189-1
				115" x 58" x 49"	EA	EA
LIC 7-70/1283		- 3-12-		Lot # 55350		
AMEND 1-70/1985						

B/L DESTINATION RECIFE

SETS SEAT COVERS	
SETS MATS	
EXTRA WHEELS & TIRES	
RADIO & ANTENNA	
SEALED CARTONS OF PARTS	
HEATERS & DEFROSTERS	

MARKS

ITAPESSOCA - AGRO
INDOSTRIAL S.A.
BRASIL

GENERAL MOTORS OVERSEAS OPERATIONS
DIVISION OF GENERAL MOTORS CORPORATION
BY W. TRAINOR Jan 8, 1971

Mtd New Jersey Export Marine Carpenters Inc Ex #1
for ID 9/12/74 F. Lugo

A 12

EXHIBIT 16--EXCERPT FROM SHIP LOG

Folha "B"

115

DATA: 20 de Janeiro de 1971

Situação do navio às 00,00 HORA Navegando - Navio Pinto de NEW YORK com destino ao Pinto de RECIFE.

(1) HORA CIVIL	RUMO (2) Verdo	(3) Giro	(4) Padrão	(5) Governo	ODOMETRO (6) Fundo	(7) Barca	(8) R.P.M.	(9) BAROMETRO	TERMOMETRO (10) Sêco	(11) Úmido	VENTO (12) Dir.	(13) Intens.	(14) EST. DO MAR	NUVENS (15) Esp.	(16) Quan.	(17) VISIBILIDADE	(18) EST. ATM.	(19) METEOROS	(20) RUBRICA
01	090°	092°	110°	093°	2779.4	-	110	1005	07°C	05°C	NE	6	6	KN	9	3	2	cbj	
02	090°	092°	110°	090°	2803.5	-	110	1006	07°C	05°C	NE	6	6	KN	9	3	2	cb	
03	090°	090°	110°	090°	2827.7	-	110	1006	07°C	06°C	NE	6	6	KN	9	4	2	cb	
04	095°	095°	110°	090°	2851.5	-	110	1006	07°C	06°C	NE	6	6	KN	9	4	2	cbj	
05	090°	090°	110°	090°	2875.7	-	110	1006	07°C	06°C	NE	6	6	KN	9	4	2	n	
06	090°	092°	110°	090°	2899.3	-	110	1006	07°C	06°C	NE	7	7	K	9	3	2	n	
07	090°	090°	110°	090°	2923.1	-	110	1006	07°C	07°C	NE	7	7	K	9	4	2	n	
08	090°	090°	110°	090°	2946.3	-	110	1006	08°C	07°C	NE	7	7	KN	9	4	2	n	
09	090°	090°	110°	080°	2970.3	-	100	1006	08°C	07°C	NW	6	6	KN	9	4	2	n	
10	120°	120°	140°	120°	2996.9	-	150	1007	08°C	07°C	NW	6	6	KN	9	1	2	nv	
11	120°	120°	140°	120°	3018.3	-	150	1007	08°C	07°C	NW	6	6	KN	9	1	2	nv	
12	120°	120°	140°	120°	3038.7	-	150	1007	08°C	07°C	NW	6	6	KN	9	1	2	nv	
13	120°	120°	140°	120°	3059.0	-	150	1007	08°C	07°C	NW	7	7	K	9	5	2	n	
14	120°	120°	140°	120°	3079.0	-	150	1007	08°C	07°C	NW	7	7	SK	9	6	2	n	
15	120°	120°	140°	120°	3098.8	-	130	1007	08°C	07°C	NW	7	7	K	9	7	2	n	
16	120°	120°	140°	120°	3118.0	-	130	1007	08°C	07°C	NW	7	7	K	9	7	2	n	
17	120°	120°	140°	120°	3137.7	-	120	1007	08°C	07°C	NW	7	7	K	9	6	2	n	
18	120°	120°	140°	120°	3156.4	-	120	1007	08°C	07°C	NW	8	8	K	9	6	2	n	
19	120°	120°	140°	120°	3175.1	-	120	1008	08°C	07°C	NW	8	8	K	9	6	2	n	
20	120°	120°	140°	120°	3193.2	-	120	1008	09°C	07°C	NW	8	8	K	9	7	2	n	
21	120°	120°	140°	120°	3212.5	-	120	1008	09°C	07°C	NW	8	8	K	9	7	2	n	
22	120°	120°	140°	120°	3231.4	-	120	1008	09°C	07°C	NW	8	8	K	9	7	2	n	
23	120°	120°	140°	120°	3250.9	-	120	1008	09°C	07°C	NW	8	8	K	9	7	2	n	
24	120°	120°	140°	120°	3269.3	-	120	1008	09°C	07°C	NW	8	8	K	9	7	2	n	

DADOS AO MEIO DIA

	EXISTENTE	CONSUMIDO
COMBUSTÍVEL		
LUBRIFIC.		
ÁGUA		

RAIO DE AÇÃO RESTANTE:

EM VELOC. ECONÔMICA: _____

FUSO HORÁRIO ÀS 12 HORAS: 02 E(W)

POSIÇÃO DO NAVIO

LATITUDE N	LONGITUDE W E N
Estimada: 34°53'S	Estimada: 062°12'O
Observada: —	Observada: —

CORRENTE

Direção: N Velocidade: _____

Singradura últimas 24 horas 243.0

RUBRICA DO ENCARREGADO DO LIVRO

RUBRICA DO CAPITÃO

Water would have entered the lower hold through the joints in the pontoon hatches and from the two scuppers in the after end of the tween deck.

At some stage the second pontoon from forward canted up and fell partially into the lower hold. To some extent this may have been fortunate as it is believed that this jammed the 'moving' cargo in the tween deck to some degree.

The paper bags of plastic and the jute bags of malt disintegrated and the sludge thus formed with the pulped up newsprint virtually filled the lower hold and starboard side of the tween deck.

When the water level reached the top of the lower hold it ran into No.3. Lower Hold via the gratings in the king post ventilators.

Had these apertures not been blocked on instructions from the Master when the situation was appreciated, we consider the vessel would have foundered.

In our examination of No.2 tween deck we had noted that three types of 'eyes' for securing were present and comprised:

a. small semi-circular eye about 3/4" in diameter welded to the 'toe' of the frame or stiffener

b. U shaped eye, about 6" between arms, welded to the 'flat' of the frame

c. pad eyes welded to the shell plating

The Master advised us that the first two types were put on during the vessel's construction and the third subsequently.

We noted the position and type of damaged/sheered eyes in the deck

as follows:

Forward bulkhead	port side of centre line bulkhead	7th	Stiffener inboard type a	broken
"	" starboard	8th	" "	sheered off
"	" "	4th	" "	broken
Port side	14th frame from forward		type a	sheered off
" "	20th " "	"	" " b	distorted
Starboard side	19th frame from forward		type b	distorted
" "	" 25th " "	"	" b	distorted
" "	" 29th " "	"	" a	broken

The dimensions type and condition of these eyes will no doubt be dealt with in detail by Mr.E.Ganley who subsequently examined them. The extent of structural damage to shell plating etc., and temporary and final repairs made thereto will also be dealt with by Mr.Ganley, Mr.Parker and Mr. Witowski Lloyds Register Surveyor from Jacksonville who examined the vessel in Savannah. Therefore we do not propose to describe it in detail, for which reference should be made to the reports of these gentlemen.

The turnbuckles used for tightening the lashings were of the type made up of two parallel flat bars whose ends had a hexagonal nut welded between them. Two sizes were involved and again the detail will be described by Mr. Ganley. We found one turnbuckle in No.2 Tween Deck in two sections with the welds on the nut at one end sheered. So far as we could ascertain the lashing in question had run from the container on the portside to the ships side.

The lashing wire used throughout the stowages was the customary type, six strand hemp core flexible steel wire rope, except for the lashings of the deck cargo on the port side which partly comprised a multi strand cable laid wire similar to that used on hoists or an elevator.

We formed the impression that the lashing wire was not new but had been re-used.

It was not practicable to discharge any of the cargo from No.3. hatch in Bermuda but it was essential to clear the bilge lines which were choked, before sailing to a U.S.port.

A considerable amount of time was subsequently spent in dismantling the valve chests and part of the bilge lines in the engine room. Attempts to clear the lines by 'blowing back' were unsuccessful.

Ultimately portable pumps brought by air from Jacksonville (Florida) were used to pump out the space to an extent in which a diver, working head downwards in water, was able to reach the end of the bilge line in the starboard after corner. The line was found to have been made up with non-return valve in the end of it which was completely chcked by solidified latex and other debris drawn into it during pumping.

Our initial examination of cargo in No.3 hatch had made it clear that to discharge the damaged cargo in the lower tiers, virtually all the cargo above would also have to be discharged.

We also made an examination of the cargo in No.1 hatch. In the lower hold drums of caustic soda had been reasonably well stowed with shoring inserted to prevent movement. However, wooden cases of general cargo in the after end of the space were unsupported and not lashed in any way. Several of these had shifted in stowage.

In the tween deck at the after end where the original St.John stowage was intact, rolls of newsprint were stowed two high on end well secured by a framework of 4" x 4" timber nailed into position.

Where this stowage had been 'broken down' in New York to discharge the coffee then stowed in the lower hold below, the residual cargo and/or restowage had been very badly carried out. In the wings some attempt had been made to rope lash the reels between the ships side and the framework of timber remaining.

However, in the forward end the stowage had been completely unsupported. As a result a number of reels had fallen down and rolling about the space in the square had sustained considerable damage.

It was clear from our examination of the stowages in No.1 and 3 hatches that they would have to be lashed and secured prior to departure from Bermuda.

We examined the deck in way of No.3 hatch on the starboard side in which position the containers had become loose and sustained damage. Two of the 'small' eyebolts on deck had sheered completely at their points of welding and a third on the coaming was partly severed and distorted.

By the 1st February discharge of the square of No.3 lower hold was progressing and on that day the large Clark Equipment tractor was lifted out of the portside of the lower hold, together with another large and heavy piece of steel production equipment.

As the grab removed the sludge, the positions of the several portable pumps was altered so that the water level in the space could be progressively lowered. The suctions of the pumps had to be continuously tended to prevent their becoming choked.

Washing down, cleaning and oiling of the equipment/machinery on the quay commenced on 2nd February with a gang obtained by Messrs. Darrel from their own workshop. This work continued up to the time of completion of reloading. Two Caterpillar tractors were among larger items of cargo discharged from No.2 hold on 3rd February.

On the 4th February Mr.F.MacNamara of Cichanowitz & Callen, lawyers representing the P and I Club, arrived from New York together with Mr.E.Ganley the hull surveyor they had appointed. The following day a detailed inspection of all spaces was made with these gentlemen, the Captain of the vessel and the undersigned.

A 17

EXHIBIT 42--STOWAGE OF CARGO PLAN

STOWAGE PLAN OF CARGO SHIPPED ON BOARD AMAZONIA VOY 5

PORTS		
RECIFE		48
SALVADOR		7
RIO	430	1350
SANTOS	410	571
MONTEVIDEO		13
TOTAL	1430	1557

	3	2	1	DECK	TOTAL
		48			48
	4	3			7
	330	571	446	3	1350
	602	741	120	86	1549
	6			7	13
	942	1363	566	96	2967

NY SANTOS 38 CTN CHILL C/O MATE

NY SANTOS 340 FT CONT N 2N038 N/L 47000 WGT ON CHEW
NY SANTOS 340 FT CONT N 2N038 N/L 47000 WGT ON CHEW
NY SANTOS 340 FT CONT N 2N038 N/L 47000 WGT ON CHEW
NY SANTOS 340 FT CONT N 2N038 N/L 47000 WGT ON CHEW
NY SANTOS 340 FT CONT N 2N038 N/L 47000 WGT ON CHEW

NY SANTOS 2 40 FT CONT N 2N038 N/L 47000 WGT ON CHEW
NY RIO 1 20 FT CONT N 2N038 N/L 47000 WGT ON CHEW
PHILA SANTOS 2 PC CLANCY PTS N/L 1 PC 80 TON 4 BAGS TOTAL 81 TON

ST JOHNS SANTOS BAGS MALT 57 TON

ST JOHN SANTOS P/L BAGS MALT

NY PARANAGUA 4 VANS CRAW SAW PET SCR COV (TWO)

NY SANTOS 1 C/S

NY SANTOS 3 40 FT CONT N° 27 449 N/L 16327

NY RIO 324 DE CAUSTIC SODA

NY RIO 1 C/S MACHY N/L 6890 4 TON

NY RIO D/L (TWO) SODA 91 T...

S.J. RIO D/L ROLLS PAPER

ST JOHNS RIO ROLLS PAPER 60 TON

ST JOHN SANTOS 660 BAGS MALT 34 TON

ST JOHNS RECIFE 3 C/S MACHY N/L FT 17000 D 16000 16 TON

ST JOHNS SANTOS P/L MALT

NY SANTOS 1 C/S MACHY N/L 4 TON

NY SANTOS 1 40 FT CONT N. 2N110 N/L 24076 SEE

250 TON

NY RIO 6 BOATS 60 DE CITRIC ACID 4 DE OIL CEDAR WOOD 8 TON

NY SALV 12 C/S CCNL 72 CTN DRIVING PLATES 4 TON

NY RIO 125 C/S CCNL 33 BAG RESIN 33 PCS STEEL CASTINGS 16 C/S MACHY N/L 8365 25 CT COMPRESSOR 4 C/S MACHY 10 C/S RAILWAY PARTS 9 C/S SIGNAL PARTS 9 C/S VALVES 21 C/S WELDING RODS 20 DE N. NO2 CHEM 50 DES WIRE ISOCYANATE 357 PCS COPPER WIRE BARS 173 TON

NY SANTOS 4 20 FT CONT NOS 2L106 2 N/L 37015 N. 2L112 7 N/L 32065 N. 2L119 N/L 33832 N. 2L1015 N/L 33215 58 TON

NY SANTOS 40 CTN PARTS 4 C/S STEEL 40 DE LATEX 5 C/S MACHY 1 C/S SWITCH CCNL PTS N/L 6350 2 C/S MACH PTS 4 SKID PHOTO MATL 5 SKID PRINT PAPER 2 ROLLS STEEL 1 CLO-D CV10 11 SKID SL SHEET 6 C/S BOILER PARTS 75 C/S CCNL 60 TON

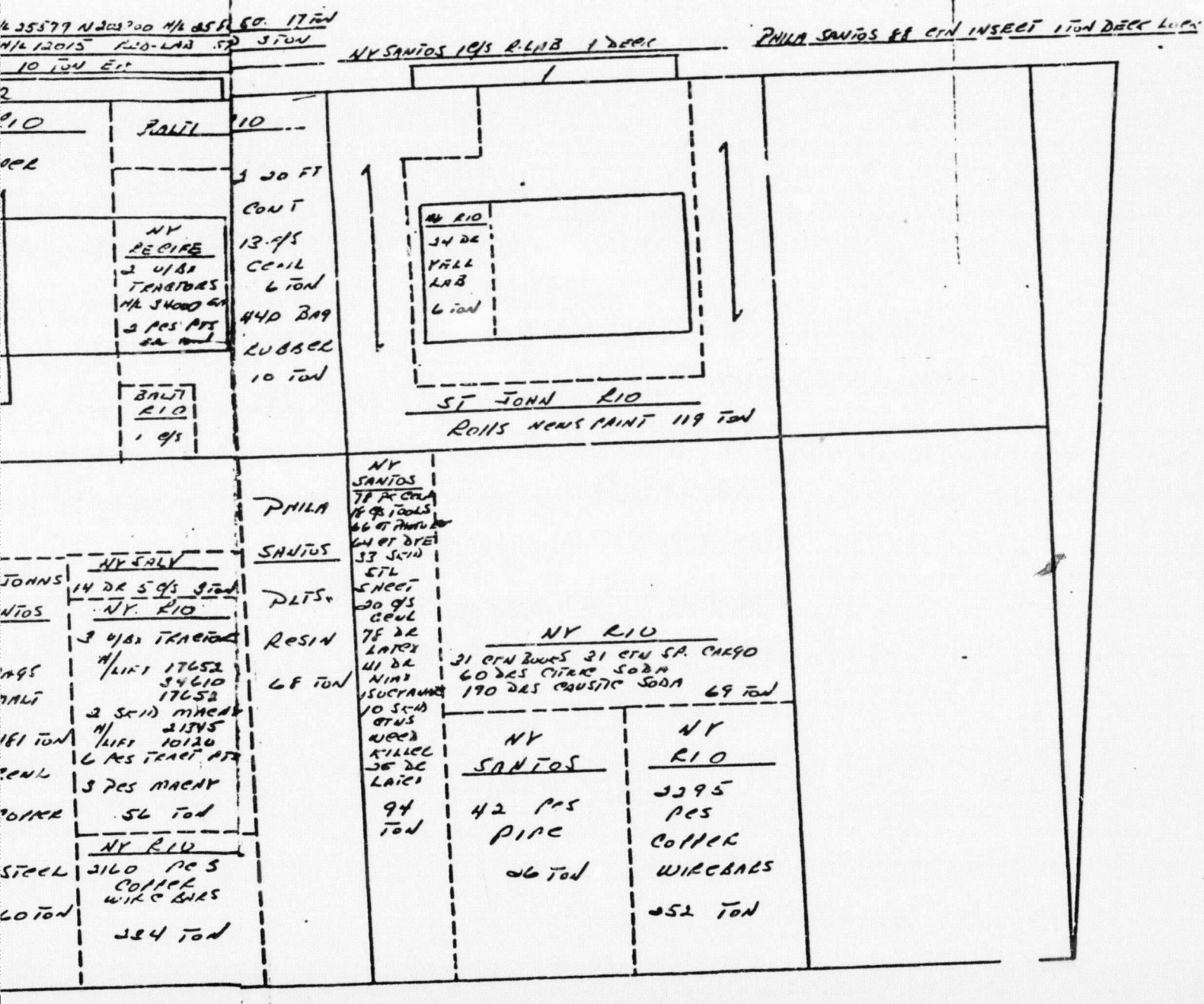
NY SANTOS 1593 PCS COPPER WIRE BARS 174 TON 2 PCS EXPANSION JOINTS N/L 6205 EA 6 TON

BALTI SANTOS CCNL 21 TON DRS 61 TON

NY SANTOS 30 C/S CCNL 2 C/S VALVES 2 C/S LOCO PT 3 SKIDS NEWS PAPER CONVEYOR 41 C/S CCNL 12 SKID DES 1 RED KINKY 11 SKID TV ECON 12 SKID FIBER GLASS 4 DR PRINT INK 60 DES TITANIUM DIOXIDE 1 C/S CCNL 5.2 DE SODIUM 22 DE COAL TAR DYES 20 DE CALCIUM CARBONATE 4 BALS RADIATORS 69 TON

BALTI SANTOS 1 PC STEEL 60 TON

SAILED JANUARY 18 1971 FROM NEW YORK TO



A 18

EXHIBIT 4[illegible] PHOTOGRAPHS 1 AND 18

#1 'Tween Deck

#1 From port after corner diag.
to strbd. forward corner

#3 Lower Hold

A 19

Exhibit 43

#18 From strbd forward corner looking directly aft along strbd side

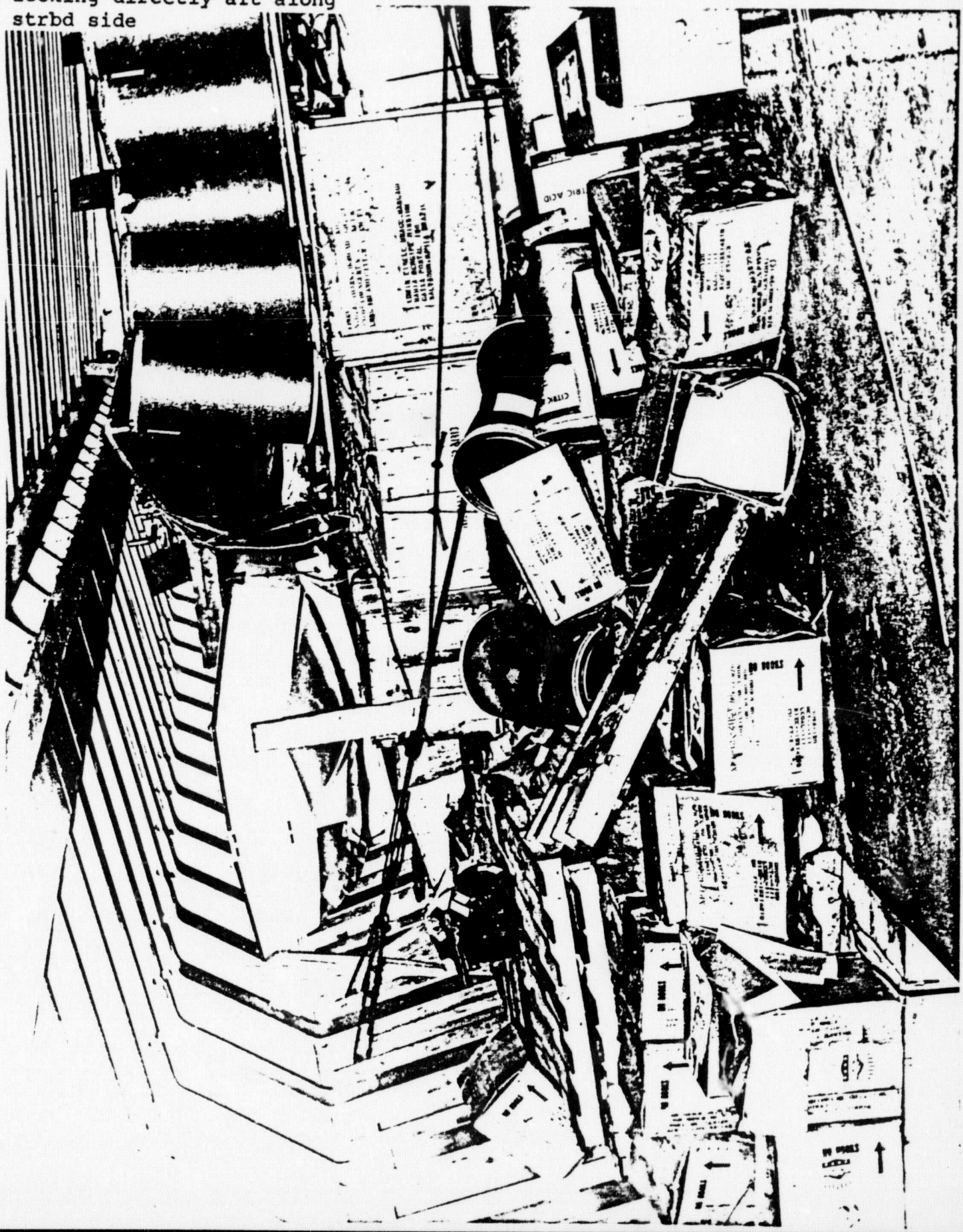


EXHIBIT 59--FIG. 4 AND 5, TECHNICAL REPORT,
LUCIUS PITKIN, INC.

Lucius Pitkin
incorporated

Cichanowicz and Callan — August 27, 1973

Attention: John H. Cleveland III, Esq. — M-2306 TR-6426

Fig. 4 WIRE ROPE BREAK AT CLIP 2/5 X

Photograph of wire rope lashing in Fig. 1 showing break at clip. Note that the part that broke passes through the U side, rather than saddle side, of the clip. This is improper clip application.

A 21

Exhibit 59

A 22

Exhibit 59

Lucius Pitkin
Incorporated

Cichanowicz and Callan — August 27, 1973

Attention: John H. Cleveland III, Esq. — M-2306 TR-6426

Fig. 5 WIRE ROPE LASHING

Other submitted wire rope lashing formed by doubling up the rope at one end and clamping the loose ends with clips. One clip on one end; two clips at other end.

Here, the rope broke on the single part side though the direction of the clips was correct. However, for 5/8-inch diameter rope a minimum of three clips at each "joint" is recommended practice.

A 23

Exhibit 59

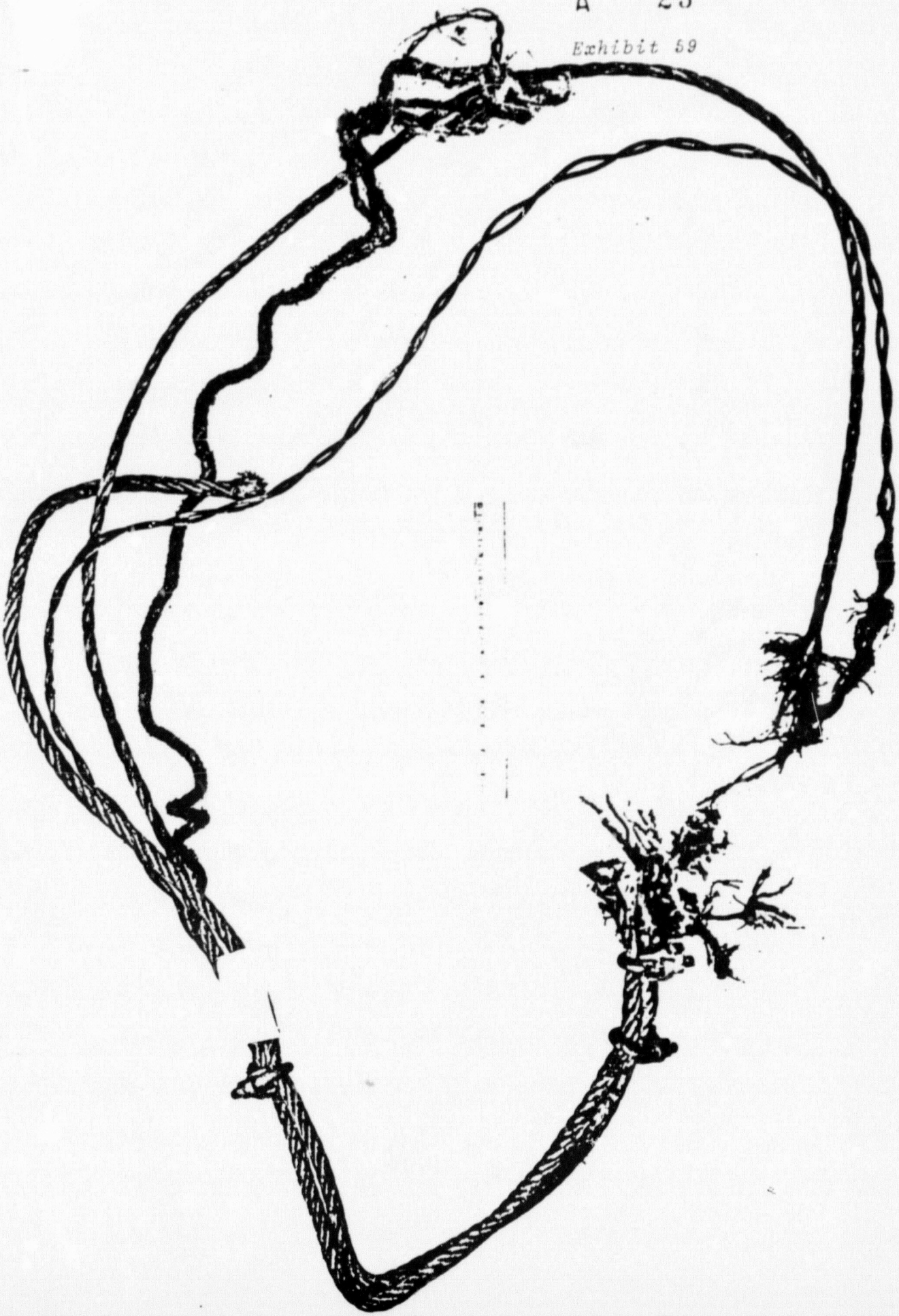


EXHIBIT 61--EXCERPTS FROM DEPOSITION OF DANIEL J. DEVANEY

to administer an oath; that all objections, except as to form, are reserved to the time of trial.

....

D A N I E L J. D E V A N E Y, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY

MR. WARNER:

Q Sir, would you please state your full name and home address?

A Daniel J. Devaney, 15 Crab Apple Road, Flower Hill, New York.

Q By whom are you employed, sir? What is your position?

A I am president of New Jersey Export Marine Carpenters.

Q How long ve you been president of New Jersey Export Marine Carpenters?

A Nine years.

Q New Jersey Export Marine Carpenters, Inc. is a New York corporation?

A It is a New York corporation.

Q Who are the other officers beside you, sir?

BEST COPY AVAILABLE

A I am the only officer.

Q When was New Jersey Export Marine Carpenters, Inc. founded or established?

A I think it was in November of 1964, around the latter part of November, 1964.

Q You are here this morning because a third-party complaint has been filed in the United States District Court by the owners of the Steamship Amazonia, namely, Netumar against United Terminals, Inc., whom I represent, and New Jersey Marine Carpenters, Inc.

The third-party complaint relates to the call of the Amazonia at the Port of New York on or about the 14th of January, 1971.

That is just a statement to orient you. My question to you is, did New Jersey Export Marine Carpenters, Inc. do any work aboard the Amazonia during her call at the Port of New York on or about 14, January, 1971?

A We did provide services.

Q What type of services did you provide, sir?

A Chocking and securing cargoes.

Q Who engaged you for the work that you performed aboard the Amazonia?

A Netumar Line.

Q In your prior answers you indicated the stevedore had something to do with the lashing and securing and I am trying to find out what.

A I said what?

Q That the stevedore had something to do with the lashing and securing.

A When did I say that?

Q Perhaps I misunderstood you.

The stevedore and longshoremen have nothing to do with the lashing and securing?

A That is our job to do.

Q That is your job?

A Right.

Q Once the cargo is landed, as far as the lashing and securing is concerned, the stevedore and the longshoremen are not interested?

A I don't know about them being interested. We perform our duties when they are finished landing the cargo. We can't do any work until they land it.

Q I understand that, sir.

Once it is landed, their job is over, is that correct?

MR. McGOWAN: I object to the form of the question.

EXHIBIT 65--EXCERPTS FROM DEPOSITION OF WILLIAM MONTELLA, JR.

of cargos, of all types.

Q How long have you been with Quin?

A Approximately ten weeks.

Q Prior to that by whom were you employed?

A I was employed by C. C. Lumber Co., marine carpentry industry, as general manager.

Q C. C. are those initials--

A Before that it was Court Carpentry.

Q When did you first go with C. C.?

A November 1st, 1972.

Q Prior to that with whom were you associated?

A New Jersey Export, vice president of operations.

Q When did you first go with New Jersey Export?

A When it was originated which was approximately, I would say, six years ago.

Prior to that I was with McGrath Marine Carpenters for 15 years.

Q And prior to that?

A I was 15 years old. I couldn't work.

Q I take it that in January 1971 you were employed by New Jersey Export Marine Carpenters,

Inc., is that correct?

A Correct.

Q Do you recall a vessel in the Port of New York, by the name of AMAZONIA during January of 1971?

A Yes, I do.

Q What did you have to do with the AMAZONIA, if anything?

A We had shoring of cargo, lashing of cargo on board the AMAZONIA.

Q For whom was New Jersey working on the AMAZONIA?

A Netumar Steamship Company.

Q Pursuant to a written contract?

A No, sir.

Q Oral contract?

A I imagine you might say so.

Q Did you have anything to do with the contractual relations between New Jersey and Netumar?

A I had a nice relationship with Mr. Swanton.

Q Negotiating the terms and conditions, I mean, was that within the scope of your activities?

A No, sir.

Q Mr. Montella, do you recall the dates on which New Jersey worked aboard the AMAZONIA?

A Vaguely.

Q Do you have any records from which you can refresh your recollection?

A Not at this time.

Q All the records are still with New Jersey?

A If they have them, I am sure.

MR. CONROY: In response to Mr. Warner's request, I am showing the witness documents previously marked as Exhibits 1, 2 and 5 on the date of March 6, 1973.

Q Mr. Montella, I show you these documents and ask you if you can identify them?

A Yes, I can.

Q Did you have anything to do with the preparation of any of these documents?

A I made some of those.

Q Will you pick them out and tell me which one you made up?

MR. WARNER: The witness handed me daily labor record, dated January 15, 1971,

Exhibit 65

consisting of two pages.

I ask it be marked as United Terminals Exhibit 1 in this deposition.

xx (Daily Labor Record, dated January 15, 1971 marked United Terminals Exhibit 1 for identification.)

MR. WARNER: The witness has handed me Daily Labor Records, dated January 14, January 15, again, January 15 again, and January 15 again, consisting in all of five pages.

xx (Daily Labor Records, dated January 14, and three dated January 15, consisting in all of five pages, marked United Terminals Exhibit 2 for identification.)

Q I show you Daily Labor Records dated 18 January, 1971 and ask if you can identify that document?

A I can identify it. However, I didn't make it out.

Q Can you tell us who did make it out?

A I really couldn't, not at this time.

Q Did you have anything to do with the work that is described in that record?

A I am sure that I was the overseer of it.

Exhibit 65

MR. WARNER: May we have that marked?

xx (Document marked United Terminals Exhibit 3 for identification.)

Q I show you another document, Daily Labor Record, dated January 18, 1971, and I ask you if you prepared that?

A I didn't. But I was an overseer.

xx (Document marked United Terminals Exhibit 4 for identification.)

Q I show you another document under heading New Jersey Export Marine Carpenters Inc. addressed to the AMAZONIA and owners, no date, but it says "Worked from 1/15 to "X" 1971" and ask you if you can identify that document?

A I had nothing to do with this area.

However, I can identify it as a bill that was used for the New Jersey Export records.

xx (Document headed "New Jersey Export Marine Carpenters, Inc." addressed to the AMAZONIA and owners, no date, marked United Terminals Exhibit 5 for identification.)

Q Will you tell us what you had to do with the securing of cargo in the AMAZONIA on or about January 15, 1971, in number 2 tween deck.

A To say number 2 tween deck is very difficult to say at this time because Idon't recall exactly what I did do on that ship in that hatch.

But, on that ship, I did like I do on all ships. I supply men, and we secure the cargo as directed.

Q As directed by whom?

A By the port captain and the chief mate.

Q When you say port captain, can you identify the individual?

A Well, at that time they had two port captains and a number of assistants but I would say the main figure was Captain Richard Piper.

Q Was he the gentleman that gave New Jersey instructions with regard to securing cargo on the AMAZONIA during the time we have been discussing?

A Yes, sir.

Q How did it come about that New Jersey came to work there, who told them to come?

A It was a verbal contract made between Netumar and New Jersey Export that the securing was to be done and we were doing it for some time, ship to ship basis of course, and whenever they

had a ship there with cargo to be secured we would be called by the port captain and told to come and see the ship, with so many men to do the job.

Q In fact, in January of 1971, New Jersey did receive oral instructions from the port captain or someone in his office to turn to at Pier 36 and do work on the AMAZONIA?

A Correct.

Q Did they designate how many carpenters they wanted, foremen?

A They tell us to bring in four and one, two and one.

Q Four carpenters and one foreman, something of that sort?

A Correct.

Q Do you have any recollection as to how many men were brought in on the AMAZONIA?

You can look at the exhibits.

A I do not recall. It was four and one carpenters for half a day.

Q What did they do?

A They constructed fences where needed.

Q Will you tell us what a fence is?

A A fence is made out of dunnage. It

can be used for many purposes. It can be used to prevent other cargos from damaging certain cargos in the ship, it can be used to fence off cargo before shoring, it can be used just to separate one port from another.

Q Can you tell us in what compartment in the vessel the fences were constructed?

A At this time, I cannot, sir.

Q And you don't know the purpose for which the fences were constructed on this particular date in the AMAZONIA?

A At this time, I do not.

Q Do fences have anything to do with the securing of a heavy lift?

A No, sir, nothing whatsoever.

Q That is not even remotely connected?

A Not even remotely connected.

Q Did New Jersey receive instructions from the port captain to secure any heavy lifts in the AMAZONIA?

A Most ships we did by looking at the labor ticket and material ticket which is before me, they have four by six timber ordered so there must have been heavy lifts involved.

Q Do you have any personal recollection of this particular ship?

A Somewhat, yes.

Q Tell us what your recollection is, what was secured, how was it secured and by whom was it secured?

MR. CONROY: With respect to when?

MR. WARNER: This particular ship.

A I don't recall when it was loaded, the first, second, third or fourth, the heavy lifts.

But, I do recall they had some containers on deck, they had some crane parts that were chocked, I believe and I do vaguely remember the lifts being loaded in the hatch, being secured.

Q How were they secured?

A With timber and lashing.

Q Can you describe how the timber was used?

We don't know anything about securing a heavy lift.

Can you tell us how it was secured?

A All heavy lifts are different. There are cases, tractors, rubber tire tractors, all different.

Q What was this?

A These I believe were large units with rubber wheels.

I may be wrong. When you secure lifts in this manner you take four by six timber and you crib them, box them in and you brace them off to either the skin of the ship or cargo that is next to it, if it is strong enough to secure to it.

It depends on what was next to it and so forth. But, you box them in, shore it and then--

Q What does shore mean?

A Bracing.

Q In other words, you put a box around the unit which you are securing and--

Q You put a four by six timber all around it, one on top of the other, in the forward and after end, and--this is your unit here and four by six timber on the side of it which sticks out this way and that way, a long piece and this other piece goes on top of it, catching the two.

You spike them down, forward and aft. Then you brace, from this piece, brace it in to

either cargo if it is strong enough to hold it--

Q That is the shoring you were talking about?

A Yes, or to the skin of the ship or if you can you put legs up, depending on where it is in the ship and then you take wire, turnbuckles.

Q The wood, as I understand it, you put a crib or sort of a frame around the bottom of the unit?

A Correct.

Q Then from the cribing or frame you run timbers out to the skin of the ship or to other substantial cargo and put it against that?

A Yes.

Q This is all nailed together?

A All nailed together.

Q That is the end of the wood business, is that correct, or do you--

A That is the end of the wood business.

Q What do you come to now?

A Lashing.

You lash this unit as best you possibly can, again depending on where she is located, how she is in the ship, where units are that you can

hook this piece up to.

If you have pad eyes, it's wonderful. If the pad eyes are directly down it is great. Sometimes you do not. Sometimes you have cargo that is blocking pad eyes. You may have a container on the side of it. You may have pad eyes on the other side of the container. There is no way possible to get to this then. Now you have to take your wires to whatever means possible to secure it, either taking the two of them together, lashing them together, marrying them together.

Q Marrying what together?

A The two units, or four or six, whatever you have.

Then you try to look for leads, I would like to take as many leads in opposite directions as I can.

Q A lead is a wire leading from one point of the unit down to a pad eye?

A Yes.

Q And you secure one end on the unit--

A Yes, and turnbuckle it in the middle or to a pad eye and you try to put as many forward as you can, and burton--

Q In the years you have been working as a carpenter, have you formed an opinion as to whether in cases such as these heavy lifts it is better to lash them directly down the deck to pad eyes or out to the wings of the hatch?

A It is definitely better to pull them down directly to the deck.

Q Is there a reason for that?

A Yes.

Q What is that?

A You are pulling your load down, not up.

Q What does that accomplish?

A You are pulling the load down. When you pull the load down she has less chance to vibrate. Especially on a rubber tire unit. That's why they chock cars the same way, with two by fours, and they take rope and they pull them down so they surpress--you push down on the fender and depress it, and you put a spanish twist and stop the vibration.

Q If you had your choice between pad eyes and running wires out to the wings--

A I would definitely pull it down.

Q You would not run wires out to the wings?

A No, sir, I wouldn't.

Q Is it your testimony you have seen a lot of stowage on the burton?

A I have seen it.

Q You said it was done quite often.

A I said I have seen it done quite often on the water front.

Q I think you said many times.

A Many times.

Q But you said it is not proper?

A Well, getting back to that code of-- that manual. It is not correct.

Q But it is done?

A Yes, it is done.

Q When it is done I think you testified extra precautions have to be taken to insure that the cargo is not going to roll around?

A If I know heavy lifts are going to be loaded on a burton, I will use that as a wedge to get more men from the port captain.

Q Did you do it in this case?

A I didn't know they were going to be loaded on a burton.

Q What did you do--

issued concerning these staples?

A I have seen a report of Mr. Ganley this time on my arrival in New York.

Q That was the first time you seen it?

A That was the first time I seen it.

Q Is it possible, in your opinion, that the first thing to give way could have been one or more of these staples, before the lashings were sheared?

A Repeat the question.

(The last question was read by the reporter)

A It is possible.

Q Now, going back when the vessel arrived at Savannah, was it you that delivered the two samples to Mr. Dubiss?

A Correct.

Q That is the last time you saw these samples?

A Correct.

Q Do you know what a batten is, Mr. Sherriff?

A I know what I consider a batten.

Q Would you tell us what a batten is, in your opinion?

A I would consider a batten was a piece of wood, roughly rectangular in cross section.

Q What is its purpose?

EXHIBIT 67--EXCERPTS FROM DEPOSITION OF ELMER W. MATHES

A I didn't receive any subpoena. As far as I know, I was just requested to appear here at such and such a date.

MR. CONROY: Will counsel so stipulate that the witness is here pursuant to a subpoena?

MR. ONSBERG: Yes.

MR. CONROY: And that all counsel received a notice of examination of General Motors Overseas Distributors Corporation, dated June 7th, 1974?

Will you so stipulate?

MR. WARNER: Yes.

MR. CLEVELAND: Yes.

MR. FLANAGAN: Yes.

EXAMINATION BY

MR. CONROY:

Q Captain, what is your occupation?

A My official title is Railroad and Steamship Cargo Stowage Representative.

Q By whom are you employed?

A I'm employed by General Motors Overseas Operations, 767 Fifth Avenue, New York, New York 10022 in the Traffic Supply Department.

Q Is General Motors Overseas Operations an

affiliated company of the General Motors Corporation?

MR. ONSBERG: That is kind of a legal question. General Motors Overseas Operations, is a division of General Motors Corporation. General Motors Overseas Distributing Corporation, is a subsidiary of the General Motors Corporation.

BY MR. CONROY:

Q How long have you been so employed?

A I have been employed for about nineteen years in that capacity.

Q What is the nature of your employer's business?

A Primarily the traffic department. Up until just recently we did all the importing and exporting for the other divisions of General Motors.

Q Will you tell us what your duties as a Railroad and Steamship Cargo Stowage Supervisor consists of?

A Primarily to assure that General Motors Cargo is properly loaded into the vessel.

Q Who is your immediate superior?

A At the present time, I think Robert Teppler.

Q Do you recall what time you arrived at the pier?

A I don't recall the exact minutes, but it was very close to eight or before.

Q Are we talking about Pier 36, East River?

A Yes, sir.

Q When you arrived, did you find the two tractors?

A If I recall exactly, the two tractors were off-shore at Number Two Hatch on the lighter.

Q Did you have any conversation with any of the vessels' personnel concerning the loading of these tractors?

A Not that I recall.

Q Did you have any conversation with anyone on the pier concerning the loading of these tractors?

A At that time?

Q We are talking about January 18th.

A No.

On January 18th there was only that limited space in the upper two tween decks available for the tractors and that was the only place it could be loaded.

about a quarter to nine, nine o'clock. I'm guessing.

Q At that time, the two tractors had been loaded into the number two upper tween deck?

A Yes, sir, I would say so. At least they were in the ship when I left the vessel.

Q Was there any carpentry or lashing work being done to the tractors while you were aboard?

A No, sir, there was not.

Q Do you recall the position of the tractors in the tween deck?

A Yes, sir, I do.

Q Can you tell us where they were?

A They were stowed in the number two upper tween deck square forward, back to back, stowed athwart ships.

Q Were you able to observe any other cargo in that compartment?

A I vaguely recall the cargo in that compartment.

Q Can you tell us what that cargo was?

A As far as I recall and I wouldn't say my recollection is one hundred percent accurate, but I believe in the starboard wing there was a cub plane body. In the forward end of the hatch, there were the wings of the plane and other cargo. I don't recall. I'm more or less guessing, but I would say there was a container in the port wing and general

cargo in the square and after end of the square. The particular general cargo I don't recall what type, but through conversation with other people recently, I believe it was mentioned the general cargo was paper, rolls of paper.

Q Can you describe for us these tractors?

A Yes, I can. These two Terexes are what they call front end loaders. They are primarily an engine with arms that lead to the front end of the equipment Terex. They are designed to manipulate a bucket and transfer ordinary substance from the ground to a body of a truck or whatever you have. It is mobile and it is designed as off the road equipment. A better way to describe it is to say it is a type of equipment that you see on the street which dumps the earth into the truck before it is hauled away.

Q I notice that on Exhibit One, in addition to two Terexes, it mentions two buckets. Did you observe these buckets?

A I believe my report mentions buckets; doesn't it? Two buckets. Yes, sir.

Q Were the buckets loaded during the time you were aboard the vessel?

A I would say yes, but I don't particularly recall. In other words, when they start discharging cargo from a

concerned because the cargo had arrived late; was General Motors concerned that perhaps there wouldn't be sufficient room under deck to stow these Terexes?

A The steamship line, if I remember correctly, promised they would reserve sufficient space under deck to load these two Terexes.

Q When the tractors were loaded, was there just a limited amount of space in which they would be stowed?

A I would say that there was sufficient amount of space in number two upper tween deck which they apparently reserved for these two pieces of cargo. Whether there was other space in the ship I do not recall.

Q Was there sufficient space to allow the tractors to be stowed before and after?

A I don't recall exactly but I don't think so. I can't say definitely but I don't think so.

Q Did you observe any lashes or carpenters working on cargo in number two while you were aboard?

A While I was aboard there was no lashes or carpenters working on the cargo in number two.

Q Did you ever have any discussion with a Mr. Swanton?

A I do not.

EXHIBIT 69--EXCERPTS FROM DEPOSITION OF GILBERTO SERRA

G I L B E R T O S E R R A , being first duly sworn by the Reporter, testified through the Interpreter as follows:

EXAMINATION BY

MR. FISH: (Through the Interpreter.)

Q What is your full name?

A Gilberto Serra.

Q Where do you live?

A In Rio de Janeiro.

Q What was your employment in December of 1970 and January 1971?

A I was Ship's Captain of the vessel AMAZONIA, a Brazilian vessel.

Q Who employed you?

A Companhia De Nevegacao Maritima, Netumar.

Q Where were you born, Captain?

A In Rio de Janeiro, Brazil.

Q When?

A February 25, 1936.

Q What training did you have in school?

A You mean the professional school, sir?

Q General school.

A Five years in elementary school, four

think the record should show the answers to the questions having to do with the arrangement of the containers were given by the Captain by consulting the stowage plan.

MR. FISH: Mr. Cleveland wishes it noted for the record that the Captain's answers as to containers are mostly based upon examination of the stowage plan.

A (continuing) The draft upon sailing from New York, forward 20 foot .02 inches; aft, 23 feet .07 inches.

Q Did you make any stability calculations before sailing on this voyage?

A Not myself personally. This was carried out by the First Mate.

Q Did you know what the result of his calculations were?

A Yes.

Q What were they?

A It was something like three feet.

Q That is GM, is it?

A GM.

Q What does that do to a ship of this sort? Is she stiff, tender or how was she for stability?

A Good, I would say.

Q Was she stiff at all?

A It was normal.

Q She rolled easily, did she?

A It was a normal roll, no strong roll, and good stability.

Q That is upon leaving, at the time of leaving?

A Yes.

Q Did you have an instrument from which you could read the degree of the roll?

A Yes.

Q Where was that located?

A On the bridge.

Q Not up on the flying bridge?

A No. In the navigating, helm.

Q Did that instrument make a record of the rolls?

A On a graph, do you mean?

Q Yes.

A On a paper, do you mean?

Q Yes.

A No. The ship is not equipped for graphic type recordings.

A 51

Exhibit 69

completed its operations of inspection and security for the containers and windlasses at the starboard side, and what was an inspection of holds 1, 2 and 3. No irregularity was found. Very heavy seas without any definite direction. The best course is 120 degrees."

Q Was that the best course for steering at 120 degrees?

A Yes.

Q What was the wind direction?

A The log reflects direction of wind a northwest direction of wind.

Q In the watch of 20:00 to 24:00, you have several entries about inspection at 22:00 hours. Will you tell us in your own words what happened at that time? Never mind reading the log. Do you recall what happened at 22:00 hours? You can go back and read it afterward, but I would like to have your personal recollection.

MR. CLEVELAND: If he remembers.

MR. FISH: His best recollection.

A The vessel began to list very heavily.

Q How long did it take you to appreciate that she was beginning to list? Was it sudden or

did it come over a period of time?

A Maybe about 20:00, 21:00 hours, it was listing very much toward the starboard side. This is what I was able to gather.

MR. CONROY: At what time was that?

THE WITNESS: Around 21:00 hours, maybe closer to 22:00 hundred, the vessel was listing very heavily to starboard. I would say suddenly. It started to list suddenly.

A (continuing) And there is a Kidde system we have on board, and something was out -- smoke detecting system -- something was coming out, something that was not usual in consistency. It was a different kind of a smoke. It was not something that was the usual kind of smoke that would come out.

MR. CONROY: Was the Kidde system in operation at that time?

THE WITNESS: Yes.

MR. CONROY: Where was this visible, this smoke coming out, what part of the ship?

THE WITNESS: It has a discharge which is a large pipe. It comes from the engine into the bridge.

you as if this smoke was visible. Am I correct in understanding the Kidde system is a system at which you can look and see smoke coming from the compartments, is that right?

THE WITNESS: Not smoke. I was not speaking of smoke.

MR. CLEVELAND: You were speaking of an odor?

THE WITNESS: Not any smell of smoke. This is something else.

BY MR. FISH:

Q Could you identify what this odor was? What did it smell like?

A It is a damp smell what I would call.

Q Something rotting?

A Not rotting, no. The same as if, say, you brought here naphta. It would have a certain specific odor.

Q Can you identify the odor?

A Malt.

Q Did it smell like a brewery?

A No, I wouldn't say that.

MR. CLEVELAND: May I?

MR. FISH: Yes.

MR. CLEVELAND: Did you at that time associate this odor with any cargo that you knew the ship had on board?

THE WITNESS: It could have been on account of the rolling and pitching of the vessel.

BY MR. FISH:

Q Have you been shipmates with foul smelling bilge on occasion, have you?

A Well, it would depend what kind of cargo you are carrying. It it is coffee, there will be a strong odor of coffee on other voyages. It depends upon the cargo.

Q You were telling us what developed. You notice what you say was a rather sudden development of a list, and you noticed the odor coming out from the Kidde detector. Go on from there, if you will.

A I noticed both.

Q Then what happened?

A Then an inspection was made right after that of hold number 1, and it was found that some cargo had spilled in hold number 1, and then they went over to number 2, and saw that water was

coming in to hold number 2.

Q Did they go down into number 2 hold?

A They didn't go down. They opened the access and noticed what was happening, that there was water there.

Q From this access hatch in the open deck, is that where they looked down?

A This is the small access which I told you about, on the deck.

Q The weather wasn't too bad to open that access?

A The weather was bad, but they were able to do that. It was no marvel. They could do it.

Q You say they found water in number 2?

A They found water in number 2.

Q How deep? Did they notice that?

A On the deck of the hold.

Q That is the lower bottom of the hold?

A Maybe a meter above the deck.

MR. CONROY: The lower hold?

THE WITNESS: I am talking about the deck.

Q The tween deck?

A The tween deck.

MR. CLEVELAND: This is when?

MR. FISH: When they opened the hatch and found water.

MR. CLEVELAND: My question is when?

THE WITNESS: 22:00, 23:00, around that time.

BY MR. FISH:

Q No water in number 3?

A No, nothing like that.

Q Who made this inspection?

A It was the First Mate and the boatswain. When they found water in number 2 they told me, and I went with them to see the water in number 2.

Q You looked down the hatch?

A After they told me that there was water there.

Q What did you see?

A There was a container and there was water beating against the container, but I didn't enter into the hold. I just looked.

Q What did you do then?

A I came back up on deck and I continued toward Bermuda. It was decided after consultation

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under the master is the chief mate or first mate, is that correct?

THE WITNESS: First the captain on a Brazilian vessel, and there is the chief mate and the chief mate is also called the first officer.

MR. CLEVELAND: For convenience in these depositions, instead of trying to use the names which may be confusing, we will designate chief mate when you mean the gentleman you were inquiring about.

MR. FISH: Off the record.

(Discussion off the record.)

Q And it is the chief mate who was also the cargo officer?

A Yes, that is so.

Q Just for the record, how many other mates were there on the Amazonia?

A Another two officers.

Q A second mate and a third mate?

A That is correct.

Q With respect to your stability calculations before you left New York, Captain, where are these calculations?

A I don't know.

Q Were they destroyed? Did you destroy

them?

A I really don't know.

Q When was the last time you saw them?

A When the vessel left New York the chief mate showed me the calculations.

Q So it was the chief mate that made the calculations?

A Yes, it was the chief mate.

Q Do you recall what your GM was from that conversation with the chief mate?

A It was approximately three feet, 90 and some centimeters.

Q Captain, my inquiry is this: Your memory is vague on many things, but you do specifically remember that GM. Can you account for that?

A The fact of the matter is the reason I recall the GM more than other things is that a long conversation was held about the GM in Bermuda and that is why I recall very clearly that the GM was 3 feet.

Q Who was the conversation with?

A Mr. Sheriff, who was the representative at that time?

A And Mr. Sheriff was representing the P & I

Q There is one bilge on the port side and one bilge on the starboard side, correct, in each hold?

A That is correct. In each hold.

Q Would it be the bridge or the mate that would instruct the engine room to pump the bilge?

A Yes, to make the sounding.

Q Because the engineer wouldn't know what the soundings were until the bridge told him, is that correct?

A The reports of the soundings would be automatically given to the bridge and to the engine room.

Q Would the engine room pump bilges out without instructions from the bridge?

A Generally the bridge -- the first mate would receive the report and results of the sounding before the engine room and would contact the engine room and give orders to pump.

Q Are you familiar with the various pumping systems on the Amazonia?

A No. How they operate you mean?

Q No. But can you tell us what kind of pumping systems they had?

A I can tell you what procedure. The first

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MR. CLEVELAND: What time zone?

MR. CONROY: Zulu.

MR. CLEVELAND: Do you know where that is?

MR. CONROY: Yes. They are all Zulu.

Off the record.

(Discussion off off the record.)

Q Captain, I show you a copy of a radiogram dated January 20th at 2115 Zulu number and ask if you would read that to us.

A "As of yesterday at 2000 hours wind and sea force 8, lashing two containers tween deck split, and they were secured once again. Listing. Appearing to improve. Position, 1400 hours, latitude 34.42 north, longitude, 66.50, course, 120, speed, 15, rolling 30. We are making every attempt to inspect cargo for damage. Possibly we might need a hoist, a land hoist in the Port Recife, in case we are not able to right the vessel. Everything is well on board. Signed Serra".

MR. FISH: May I ask what Zulu time is?

THE WITNESS: Greenwich time.

MR. FISH: May I ask what the difference between Greenwich and ship's time was?

MR. CONROY: Off the record.

MR. CONROY: I would like to go back and have the reporter read that total message.

(Record read.)

Q To whom was that message sent?

A To the shipowner.

Q At what location?

A In Rio de Janeiro, Brazil.

Q Did you receive a response to that message?

A I don't know. It might be here. I believe it might be this one, but I am not certain. I feel it might be this one.

MR. CONROY: May I see that, please?

That first message that he just read, let's have it marked as Export's Exhibit 1. Radio message dated January 20, 1971 sent by the Amazonia to its owners in Brazil at 2115 Zulu time, which is, can we agree, 1615 ship's time?

MR. CLEVELAND: Yes, according to the log book.

xx (Radio message dated January 20, 1971, sent by the Amazonia to its owners in Brazil at 2115 Zulu Time, was marked as Export's Exhibit 1 for identification.)

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MR. CONROY: Off the record.

(Discussion off the record.)

Q Will you tell us what No. 26 says?

A "Tell the Netumario everything is scheduled not to arrive in Bermuda depending upon this evening stop. A strong odor in No. 2 hold which contains malt, ventillator connected stop. A man injured while securing cargo, he is getting along all right. Weather improving. List 10 starboard SDA. Captain Serra."

Q Captain, the first message that you sent, No. 24, you told your owners --

A Where would that be?

Q That is Exhibit 1.

A Yes.

Q -- that the vessel was listing at that time, is that correct?

A Yes, I did indicate it was listing.

Q Did you make such an entry or make any record in your log book to that effect?

A I have to see the log book.

Q You can take a look at it.

MR. FISH: Off the record.

(Discussion off the record.)

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A No, there is no entry. There is indication of rolling 20 degrees starboard.

Q Prior to 2200 on the 20th what was the greatest roll that the vessel incurred?

A 20 degrees starboard.

Q When was that, sir?

A On the 1200 to 1600 watch.

Q This is on the 20th?

A On the 20th of January.

Q Captain, I submit -- would you refer to the entry for 20 to 2400 on the 19th.

A There is indication here of an entry stating the force, there was a force, a rolling force.

Q What was the greatest roll during that watch?

A Indicated 15 degrees starboard.

Q Now, on the 20th between midnight and 0400, what was the greatest roll?

A 20 degrees starboard.

Q On the 4 to 8 watch on the 20th?

A 28 degrees starboard.

Q Was the vessel listing at that time, sir?

A From what indication there is in the log book, no, there is no indication made that there was a roll,

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the vessel was rolling 28 degrees starboard.

Q When did it start to list?

A From the entries in the log I'd say in the 2000 to 2400 watch.

Q On what date?

A On the 20th of January.

Q Does it indicate on the 20 to 2400 that it was listing?

A Here's what it says: At 2200 hours there was a list at starboard.

Q You told your owners that it had listed prior to that time, didn't you?

A I don't believe so.

Q I refer to Exhibit No. 1. Doesn't that indicate the vessel is then listing?

A You are talking about No. 24 here?

Q Yes, message 24.

A Yes, it is indicated.

Q What was the ship's local time or ship's time when that message was sent?

A I would say it was around 2200. I don't know what time Zulu refers to. I would say it is 2200 ship's time.

Q The letter Z appears on that, doesn't it?

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that date?

A It was the first mate.

Q I ask you, isn't it true that the same person made the entries between 1600 and 2400?

A It apparently is so.

Q Doesn't it also appear that the same person made the entries between 1200 and 1600?

A No. I wouldn't say that. There is the signature in fact, and it is a signature of the third officer.

Q And I refer now to columns 13 and 14. Does it appear that the same person made the entries between 1200 and 2400?

A The handwriting appears to be very similar throughout the log.

Q Looking at the 20 to 2400 entries on the 19th of January, were they made by the same person who made the entries on January 20th between 20 and 2400?

A This piece here is different. It would be a different handwriting.

Q Can you explain why there is a difference in the handwriting between those two days for the same watch?

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A I really can't tell you that. I don't know.

Q Referring to pages for the 19th and the 20th, and I am referring to the lower left-hand corner of those pages, I notice that there are entries on the 19th, but there are no entries on the 20th; is that correct?

A That is correct.

Q Can you explain why no entries are made on the 20th?

A I cannot.

Q You signed both pages, though, didn't you, sir?

A Certainly.

Q And I believe we touched on this before, but the entry for local time on the 19th reads "5(w)" and the entry on the 20th reads "6(w)."

Can you explain why there is a difference?

A It would be an erroneous entry.

Q Incidentally, when you were loading at New York, Captain, what side was the vessel to the dock? You don't recall specifically. Are you referring to the log?

A I am referring to the log. Port side.

Q Was it shifted in any time during that period while you were in New York, the vessel?

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Q There is hold 1, 2 and 3.

A Hold 1, the port side, one inch; hold No. 2, starboard, one inch; hold 3, port, two inches; hold 1 starboard, three inches; hold No. 2 starboard, one inch; hold 3, starboard, two inches.

Q Isn't it true, Captain, that prior to that sounding the last sounding taken was on the 19th at 0730?

A Yes, that is true.

Q Was it reported to you between those two times, that is as 037 on the 19th and 0800 on the 20th that there was any unusual amount of water in the No. 2 hold?

A No.

Q And if such an amount of water, unusual amount of water, was found in the No. 2 hold, should it have been reported to you?

A Yes, certainly so.

Q I refer you to the engine log for the 20th of January and on the watch between 0000 and 0400. Would yo read --

A What watch is that now?

Q 0000. Would you read the first sentence?

A "The 0000-400 watch of the 20th day of January, 1971".

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17;

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Q Will you continue?

A "With the vessel sailing from New York and the destination of Recife, main engine working at reduced speed. At 0033 hours slow. At 0108 hours minimum speed".

Q Would you stop there a minute. Would you refer to the same watch in the deck log and see if there was a direction to the engineers to reduce speed to -- would you call that dead slow?

A At 0005 hours, the engines were ordered slow ahead.

Q But yet the engine log says 0033.

A Yes, that is so.

Q Can you tell us why there isno similar entry in the deck log?

A I don't know.

Q And at 0100 in the engine log it shows the engines going to dead slow.

A Minimum, dead slow.

Q Is there an entry, similar entry on that watch in the deck log?

A There is no similar entry.

Q Can you explain why?

A No.

Q The engineers don't change the engine speed on their own, do they? Don't they require an instruction from the bridge?

A They receive the orders from the bridge.

Q Who was on the bridge on that watch?

A It was the third officer, but I personally should have been on. I was very likely on the bridge at that time myself.

Q Now, would you continue to read from the engine log.

A "The oil was changed to diesel oil."

Q Why was that done?

A Certainly because of the reduction of speed in order for the engine to work better and turn better would be with diesel oil.

Q Then would you read the next entry in the engine log?

A "Generator group Nos. 1 and 2 in parallel, supplying power to the vessel".

Q And then would you read the next sentence.

A "The fire pump was then put into service along with the bilge pumps and ballast pumps to draw water from No. 2 hold."

Q Why were those pumps put on at that time, sir?

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A I don't know.

MR. CLEVELAND: What is the time? Is it pinpointed?

MR. FISH: It is in the early morning of the 20th.

MR. CONROY: Right.

THE WITNESS: There is no time indicated here.

Q Doesn't that indicate that there was an abnormal amount of water in No. 2 hold at that time?

A Since it is written here and since it is written here, it apparently was so. The fact of the matter is I have no knowledge at all about this situation. I did not give any order to have the pumps put into operation. I personally didn't.

Q Was the vessel listing on this watch?

A Nothing is indicated here that the vessel was listing at that time?

Q Now we move on to the 0400 to the 0800.

A 0400 to 0800 hours.

Q That was the watch in which the roll of 28 degrees was noted, isn't that correct?

A That is correct.

You want me to read this portion of the log

Q Were you sleeping or were you awake?

A I would take a nap once in a while on this sofa that I have there.

Q How far in distance is it from the bridge to the middle of the No. 2 tween deck in a horizontal line?

A Maybe 40, more towards 45 meters.

Q Meters?

A Meters.

Q During the period prior to 2200 while you were on the bridge did you hear any noises coming from No. 2 tween deck?

A Before 2200?

Q Yes.

A No.

Q Did anyone else report to you that an unusual noise was coming out of the No. 2 tween deck?

A No.

Q When they reported the result of their inspection to you did you go down then to the No. 2?

A I went there to inspect, yes.

Q And you went to that trunk or compartment where the ladder came out of?

A Yes.

Exhibit 69

A Forward and aft.

Q Did you have any containers on the starboard side of No. 3?

A Two containers.

Q Did you have any on the port side at No. 3?

A Two containers port side and two containers starboard side.

Q Were they 40-foot containers?

A No, no. 20-foot containers.

Q You have described all the containers on the deck and on the hatches at the time you left New York?

A I believe I have.

Q Which one or ones were the ones that started to break their lashings at approximately 10 o'clock on the 19th?

A I am almost certain of this, that it was the container on hold No. 2.

Q On the hatch or on the deck?

A On the deck.

Q On the starboard side?

A On the starboard side.

Q That was a 20-foot container?

A That is correct, 20 foot.

Q Now, between 1000 and 2200, did any other

containers break their lashings that you can recall?

A No. From what I recall, no.

Q Now after 2200, Captain, on the 20th, did other containers break their lashings?

A Here, this container over here.

Q Which one are youreferring to?

A The starboard side. There is a container on the starboard side, No. 3 hatch. No. 3 hatch on the main deck.

Q What was that, the forward container or the aft container?

A It was the forward.

Q Which of those containers broke the vent pipe?

MR. CLEVELAND: If you know.

A It was hold No. 2.

Q And you don't recall when that happened?

A This happened close to Bermuda.

Q Could it have occurred before 2200 on the 20th?

A No. It broke close to Bermuda. It detached and broke.

Q What was the state of the weather at that time?

or approval of the lashing and securing that was done in New York?

A No, I don't know.

Q Did you ever see such a document?

A No.

Q Was the existence of any such document ever reported to you?

A No.

Q As for the calculations that you testified were made by the chief officer of the vessels trim and stability when she left New York did you see the chief mate's calculations?

A No.

Q Did you receive any report from the chief mate as to his calculations?

MR. CONROY When?

MR. CLEVELAND: Prior to sailing New York.

THE INTERPRETER: In New York.

MR. CLEVELAND: Prior to sailing.

A No.

Q You testified yesterday or the day before that the vessel's metacentric height or GM was, I believe, about three feet.

A Yes.

Q From where or from whom did you receive that information?

A From the ship's mate.

MR. CONROY: When?

THE WITNESS: When the vessel was in New York.

MR. FISH: Off the record.

(Discussion off the record.)

Q After leaving New York and based on the performance of the ship were you satisfied that the GM that was reported to you had been correctly calculated?

A Of the GM?

Q Yes.

A I didn't receive the figures.

MR. CLEVELAND: He misunderstood the question.

The question is this: After sailing did the performance of the vessel confirm to him that the information he had received about the GM was correct?

THE WITNESS: The vessel was all right. It was acting properly.

Q Now, you testified that at a time during, I believe it was January 20th, you switched from automatic steering to manual steering?

A Yes.

EXHIBIT 70--EXCERPTS FROM DEPOSITION OF PEDRO DA SILVA COSTA

Q Where were you born, Mr. da Silva?

A In the state of Bahia, Brazil.

Q When were you born, sir?

A October 19, 1929.

Q By whom were you employed in December of 1970 and January of 1971?

A The accident happened in what year, now? I'm trying to recall.

MR. FISH: January of '71.

MR. CONROY: In January of '71.

A Netumar

Q Were you employed aboard a vessel?

A Yes, on the Amazonia.

Q Were you aboard the Amazonia on January 18, 1971, when the Amazonia called in New York?

MR. CONROY: It is not technically correct, she didn't arrive on the 18th.

MR. FISH: When she was at New York.

Q When she was in New York, I am sorry?

A Yes.

Q What was your position aboard the Amazonia then?

A I was boatswain.

Q Would you please describe for us your duties as boatswain aboard the Amazonia at that time?

Q Do you recall the time of day that the tractors were loaded?

A No, I don't remember.

Q Was it, if you recall, was it in the morning or afternoon?

MR. CLEVELAND: He doesn't remember.

MR. CONROY: Ask him that.

MR. CLEVELAND: Objection.

A I don't remember. I have to do a lot of work, I have many duties to perform.

Q Did you see the carpenters and lashers working at the tractors?

A No, not while they were doing the lashing, at the time. Not the carpenters nor the lashers.

I went there later on, after the first mate gave me instructions to look at the hole.

Q Did you go there with anyone to look at the hole?

A I went alone with the first mate. Maybe another seaman, an ordinary seaman. I don't know who it was exactly.

Q Were the carpenters and lashers finished at that time?

A Finished at that time, yes. They had already finished.

Q Were they still there or had they left the ship?

A They were still there on board.

Q Were they there, in your presence, when you inspected the lashing and the securi g?

A Yes.

Q Did you tell them you were satisfied with the lashing and securing?

A This was not my place to do, it was the first mate's province. I couldn't very well say whether it was done well or correct or satisfactorily, it was his position.

Q Did the chief mate tell them he was satisfied with the securing and lashing?

A He was the one who would say it, naturally. He would have to say it.

Q But did he say it?

A This I didn't hear. This is his province, I didn't hear him do that.

Q Did he voice, in your presence, any dissatisfaction with the lashing and securing?

A Yes, because apparently it was all right.

Q Just to clarify --

THE INTERPRETER: I am giving you a verbatim answer, now.

Q Just to clarify, he voiced no dissatisfaction?

A He didn't say that, he didn't say anything to me,

as far as his not being satisfied.

Q How long after you inspected the tractors were the hatches closed over No. 2 'tween deck?

A I really can't say whether it was one or two hours, but I can tell you that aft- he inspection is made, and if there is no complaint as to the way it is tied, we immediately close the hatch.

MR. CONROY: I have no further questions.

EXAMINATION BY MR. FISH:

Q As I understand it, Mr. da Silva, you had no duties with respect to the loading or the stowing of cargo, generally?

A No, I did not.

Q You merely did a specific job that the chief mate asked you to do?

A That is correct. That is my function aboard, I receive orders from the first mate.

Q Did you see these tractors when they were brought aboard and landed in the hatch?

A No.

Q From the marks you made in one of these sketches you were drawing, it is my understanding that there was other cargo in this 'tween deck area?

A Yes, there was, newsprint, coils o newsprint, and

EXHIBIT 71--EXCERPTS FROM DEPOSITION OF RICHARD A. PIPER

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form, are reserved to the time of trial

IT IS FURTHER STIPULATED AND AGREED that counsel for Third-Party Defendant shall furnish a copy of the within deposition to counsel for Defendant and Third-Party Plaintiff, without cost.

o0o

MR. CLEVELAND: The usual stipulations?

MR. CONROY: Yes, the usual stipulations and we will provide a copy to other counsel.

R I C H A R D A. P I P E R, (having been sworn, testified as follows:)

MR. CONROY: Do you waive the filing and the certific tion?

MR. CLEVELAND: Yes.

MR. CONROY: But the witness will sign?

MR. CLEVELAND: Yes, he will sign.

EXAMINATION BY MR. CONROY:

Q Will you state your full name and address please?

A Richard A. Piper; No. 8 Yacht Club Cove, Great Kills, Staten Island.

Q And what is your occupation, Mr. Piper?

A Port captain.

Q And by whom are you employed?

A Netumar International.

Q And how long have you been in that position?

A Approximately four and a half years.

Q So in January 1971 you were in the same position?

A Yes, sir.

Q And what is the nature of the business of Netumar International?

A It's an agency for the Brazilian ~~Clyde~~ Line Netumar.

Q And is that name Companhia DeNavagacao Maritima Netumar?

A Yes, it is.

MR. CLEVELAND: It's in the caption.

THE WITNESS: (Repeating.) Yes, it is.

Q And is Netumar International general agents in the United States for Companhia?

A Yes, sir.

Q What are your duties as a Port Captain?

A To effect the proper loading and handling of all operation needs of the vessels when they call at Ports in the United States.

Q And does that include the duties with respect to stowage?

the hold.

Q Can you tell from that, how much distance there was between the two Terex tractors and the cargo that was stowed after it?

A No, sir.

Q So, where we have a blank space with a line running athwartship from underneath the words paper, down onto the starboard side, what does that line mean?

A I would as ume, from being able to read the plan and having experience of reading plans, that that would indicate the rolls of paper were stowed in the port-wing from the after-square, up to towards the forward end of the hatch, across the hatch square, and down the starboard wing.

Q I see, and so that area which has got that right angle line in it, that doesn't mean that that whole area was vacant?

A No, sir, in my opinion it would indicate it's full of paper.

MR. FISH: All right, because Mr. ~~Scharff~~ Sherriff said he could not reconstruct actually the stowage from the plans that were placed before him, and, he attempted to do that and in doing so he referred to the cargo in the forward end

of the hatch, and he referred to the Terexes, and I think he came to the conclusion that the Terexes were in the first two Pontoon sections of the hatch area, and then he said that there were 449 ~~loads~~ ROLLS of newsprint ~~which~~ ~~stove~~ stowed in the wings, and across ~~Parts~~ of the Third, Fourth, Fifth, and part of Sixth Pontoons, so that would indicate to you that those rolls were in fairly close proximity to the Terexes?

THE WITNESS: It would indicate to me; yes sir.

MR. FISH: That's all I have.

MR. CLEVELAND: Thank you very much.

(Deposition ended at 12:30 noon hour.)

Subscribed and sworn to before me

this _____ day of _____, 1975.

EXHIBIT 87--EXCERPT FROM ENGLISH TRANSLATION OF DECK LOG

93

TRANSLATION

from:

operation x x x 12 - 24 x x x 25. At about 2200 noted that the vessel heeled to starboard and pitched forward. The Master ordered that an inspection be made in holds 1, 2 and 3, it being found that holds 1 and 3 were watertight and hold 2 was taking on water. The ship's drainage pumps were placed in operation. It being found that they did not remove the water, the Master deemed it advisable to convene a Deliberation Board. There is copied herewith the following

RECORD OF DELIBERATION: On January 20, 1971 on board the Brazilian merchant vessel Amazonia owned and operated by the Companhia de Navegaçao Maritime "Netumar" with main office at Rua Guilherme Moreira No. 181, Manaus Amazonas Brazil, under the command of the Captain for High Seas Voyages Gilberto Serra, in the course of its voyage No. 5 of the route Brazil-Eastern Coast of the United States of America, coming from the port of New York and intended for the port of Paranagua, with stops at Recife, Rio de Janeiro, and Santos, having been navigating since about 2000 on January 19, 1971 with a wind of a force of 30 knots, producing waves of average height, wind and sea being from the north east, until about 2000 on January 20, 1971, at ~~position determined by dead reckoning~~ estimated position of 36°24' Northern latitude and 68°25' longitude West of Greenwich, the wind increased in intensity, coming to develop a speed of 45 knots, producing high waves without definite direction, the wind having shifted from the north east to the north west. The waves broke over the deck of the

EXHIBIT 88--EXCERPTS FROM ENGLISH TRANSLATION OF ENGINE LOG

TRANSLATION

from: PORTUGUESE WB:rf

Watch from 0000 to 0400 on January 19, 1971, with the vessel on voyage from New York with destination the Port of Recife. Main engine operating normally, electric generating groups No. 1 and 2 in parallel supplying energy to the various electrical apparatus of the vessel. Provisions refrigerator in normal operation by automatic system, chambers with their respective normal pressures and temperatures for the preservation of the food. At 0055 finished draining the forepeak tank. Recovery boiler in operation supplying steam for heating the oil tanks. Sounding at 0040. Well 0.90 meters and tank 6 1.01 meters. Revolution counter 8732190, R.P.M. 163.1. Thus transferred the watch. S/Signature Illegible.

Watch from 0400 to 0800 on January 19, 1971. Received watch with the vessel on voyage from New York with destination Port of Recife. Main engine operating normally. Auxiliary motors 1 and 2 in parallel supplying energy for the entire vessel. At 0545 number 2 was removed from the bar. Provisions refrigerator operating normally. Boiler in normal operation. Soundings: well, 0.89 meters; tank 6, 0.95 meters; diesel oil day tank, 3,600 counter 8771130, R.P.M. 162.2.

Transferred the watch. S/Signature Illegible.

Watch from 0800 to 1200 on January 19, 1971. Received the watch with the vessel navigating withdestination Port of Recife. Main engine operating normally. Auxiliary engine No. 1 on the bar supplying energy for the various ship's circuits. Recovery

boiler in operation, producing steam for the firing system of the MCP. At 0900 auxiliary engine No. 2 was stopped. Provisions refrigerator under automatic control, maintaining the desired temperatures in the chambers. Soundings: Tank 6, 0.88 meters; well, 0,87 meters; counter, 8808880, rpm, 163.3. And in this condition I turned the watch over to my replacement.
S/Signature Orlando Goncalves Anzier.

Watch from 1200 to 1600 on January 19, 1971 with the vessel on voyage from New York with destination the Port of Recife. The main engine operating well, generator group No. 1 on the bar in normal operation supplying energy to the vessel. Provisions refrigerator in normal operation under automatic system. Chambers with their respective normal pressures and temperatures for preservation of the food. Recovery boiler in operation supplying steam for the ship's heating system. At 1325 half speed requested. At 1408 full speed. Soundings at 1600: well, 0.91 meters; tank 6, 0.88 meters; revolution counter, 8846630, R.P.M. 157.7. In this condition turned over watch to my replacement; everything in order. S/Signature Illegible.

Watch from 1600 to 2000 on January 19, 1971. Received watch with the vessel on voyage from New York with destination Port of Recife. Main engine operating normally. Main engine I mean auxiliary engine No. 1 on the bar supplying energy for the entire vessel. Provisions refrigerator operating under

automatic system maintaining the desired temperatures in the chambers. Soundings at 2000: well, 0.93 meters; tank 6, 0.86 meters; diesel oil day tank, 3,600; counter, 8884800, R.P.M. 159.0. S/Signature Illegible

Watch from 2000 to 2400 on January 19, 1971. Received the watch with the vessel on voyage with destination Port of Recife. Main engine operating normally. Auxiliary No. 1 on bar supplying energy for the various ship's circuits. Recovery boiler in operation, producing steam for the firing system of the main engine. Provisions refrigerator under automatic control, maintaining the desired temperatures in the chambers. Soundings at 2400: Tank 6, 0.84 meters; well, 0.94 meters; counter, 8917570, R.P.M. 136.5. Turned over the watch with the vessel with the engine reduced to half speed (ahead).

S/Signature Orlando Goncalves Anzier.

A 88

Exhibit 88

TRANSLATION -32-

from: PORTUGUESE WB:rf

Watch from 0000 to 0400 on January 20, 1971, with the vessel on voyage from New York with destination Recife. Main engine operating, with speed reduced at 0033 to slow speed, at 0108 to minimum speed. Changed from heavy oil to diesel oil. Generator groups No. 1 and 2 in parallel supplying energy to the vessel. The fire pump was started in operation together with the ballast and bilge pumps, pumping out Hold No. 2. Provisions refrigerator in normal operation under automatic control, chambers together with their pressures and temperatures normal. Recovery boiler in operation. Soundings 0400; tank 6, 0.99 meters; well, 0.92 meters; revolution counter 8944680, R.P.M. 112.9. In this condition passed watch over.
S/Signature Illegible

Watch from 0400 to 0800 on January 20, 1971. Watch received with the vessel on voyage from New York with destination Port of Recife. Main engine operating normally, burning diesel oil. Telegraph on slow with the fuel opening at 50. At 0723 half speed. At 0732 full speed. At 0755 half speed. At 0758 slow. Generators 1 and 2 in parallel supplying energy for the entire vessel. Recovery boiler in normal operation supplying steam for the heating system of the entire vessel. Provisions refrigerator operating under automatic system. Counter 8973180, R.P.M. 118.7. Without anything further to enter turned the watch over to my replacement with the engine slow speed ahead, burning diesel oil. S/Signature Illegible.

EXHIBIT 89--EXCERPTS FROM TRANSLATION OF REPORT

TRANSLATION

from: -7-

2.0 ATTENTION (?) BY THE AGENCIES (?)

GOOD

EXCEPTION: BALTIMORE Agency, complete lack of assistance and interest in attending to the ship, including dispatching the vessel to a port in which, I mean, at which, the call had been cancelled. At the time of the departure of the vessel, there was no moorer at the pier.

3.0 IMPORTANT SERVICES OR REPAIRS CARRIED OUT DURING THE VOYAGE

-See attachment -

4.0 PERSONNEL

4.1 - Condition of health - okay

4.2 - Psychological condition - poor (due to the accident)

4.3 - Discipline - okay

4.4 - Movement - Chief Engineer and Executive Officer

4.5 - Remarks:

The Chief Engineer, Helio Jose Demaria, asked to be disembarked in Bermuda, alleging the impossibility of continuing the voyage with the vessel without ~~means for draining the bilges of~~ being able to pump the holds from the engine room. Up to the date of arrival in Bermuda, he had always devoted himself to his duties, I believe it true that his request for disembarkation was caused by not having auxiliaries satisfactory for operation since during the storm he was the only officer who went down to the engine room worked since the lack of ~~skill~~ training of the engine room officers in a situation of danger was discouraging. On the other hand, I must point out that it was only the engine room officers and

BEST COPY AVAILABLE

TRANSLATION

from:

two ~~stokers~~ oilers since the rest of the crew behaved satisfactorily, including the nurse.

Pierre da Costa e Silva assisted until the vessel was moored in Bermuda, at which time he was admitted to the hospital. I should point out that the said officer, when he came on board, had already been in a poor condition of health. An excellent person, unfortunately his strength failed when it was required, but I fully recognize the condition of his health and I have no complaint as to the Executive Officer personally.

TRANSLATION

from: -9-

5.0 ---------

5.1	Duration of voyage	days	hours
5.2	Duration of navigation	"	"
5.3	Lay days in port	"	"
5.4	Vessel operating	"	"
5.5	Vessel not operating	"	"
5.6	Miles sailed		miles
5.7	Cargo moved		tons
5.8	Consumption of fuel		tons
5.9	Consumption of diesel oil		kgs
5.10	Consumption of lubricants		liters
5.11	Consumption of water		tons
5.12	Fuel present upon arrival		tons
5.13	Diesel oil present upon arrival		kgs
5.14	Lubricants present upon arrival		liters
5.15	Water present upon arrival		tons
5.16	Average speed		miles

6.0 SUGGESTIONS AND COMMENTS

1. In my opinion, all the crew members should be subjected to a health examination before embarking or when they go on vacation.

2. Vacations should be compulsory after one year on board if the voyages are difficult and the absence from home is excessive.

3. All officers should take a fire-fighting course,

A 92

Exhibit 89

TRANSLATION

from: -10-

the vessels are being modernized, constructions of high cost, and ~~lack of knowledge~~ unfamiliarity is practically ~~universal~~ general.

4. The utmost incentive should be given the trainees of the E.M.M.R.J. (Merchant Marine School of Rio de Janeiro (*)), after they complete their courses, to undergo on-the-job training with the NETUMAR; we must increase our fleet with new people.

On board AMAZONIA in the Port of Rio de Janeiro, March 28, 1971.

S/Signature

Signature of the Master of the Vessel.

BEST COPY AVAILABLE

EXHIBIT 90--MESSAGES NO. 25 AND 26, ENGLISH ONLY

[illegible]

from:

COMPANHIA DE NAVEGACAO MARITIMA NETUMAR
Radiogram (Received)

NY/RF

FROM AMAZONIA NO. 25 DATE: JANUARY 20, 1971 2200Z HL

NETUMARIO (URGENT)

ADVISE NOW NAME AGENT BERMUDA STOP LIST INCREASING AND LASHING CONTAINERS BREAKING NECESSARY TO INSPECT HOLDS STOP POSSIBLE WE WILL ARRIVE BERMUDA TOMORROW.

A 91

Exhibit 90

from: Portuguese WB:daf MJ [illegible]

COMPANHIA DE NAVEGACAO MARITIMA NETUMAR
Radiogram (Received)

NY/RIO

FROM AMAZONIA NO. 26 DATE: JANUARY 20, 1971 2320 GMT

NETUMARIO

NOT PLANNING TO PUT INTO BERMUDA
~~EVERYTHING PROGRAMMED NOT TO PUT IN BERMUDA~~

~~DEPENDING~~ TONIGHT STOP STRONG ODOR HATCH NO. 2 WHICH CONTAINS MALT, VENTILATION TURNED ON STOP ONE MAN INJURED WHILE LASHING CARGO, EVERYTHING OK, WEATHER IMPROVING, LIST 10° STARBOARD

REGARDS CMTE SERRA

CERTIFICATE OF LOADING

— OF —

NATIONAL CARGO BUREAU, INC.

Issued, as to dangerous cargo and grain in bulk, under authority of the United States of America, Commandant, United States Coast Guard, pursuant to (1) the provisions of the International Convention for the Safety of Life at Sea, 1960; (2) the provisions of section 4472, Revised Statutes, as amended (46 U. S. C. 170 (7) (a)); (3) the provisions of section 4417, Revised Statutes, as amended (46 U. S. C. 391); (4) the Magnuson Act of August 9, 1950, amending the Espionage Act (50 U. S. C. 191a); and (5) the provisions of the Act of July 5, 1884, as amended (46 U. S. C. 2) and of section 4103, Revised Statutes, as amended (46 U. S. C. 372).

NEW YORK, N. Y. January 18, 19 71

This is to Certify, *That in connection with the loading of the specific cargo hereinafter mentioned*

the BRAZ. (flag), M/V AMAZONIA (Name of Vessel) *whereof* G. SERRA *is Master,*

of 8551 *Net Tons, built at* ANSRI DAS BESI *in* 1970,

bound for SOUTH AMERICA DIRECT *has been under the inspection of a surveyor or surveyors of National Cargo Bureau, Inc., at this port from time to time during the course of the loading of the undermentioned cargo; that so far as it came under the observation of such surveyor or surveyors, the stowage of dangerous cargo and of grain in bulk was in accordance with the regulations of the Commandant, United States Coast Guard, and the stowage of other cargo not subject to Coast Guard Regulations was in accordance with the recommendations of National Cargo Bureau, Inc.*

DUPLICATE

RECEIVED JAN 26 1971 NATIONAL CARGO BUREAU, INC.

THIS CERTIFICATE IS NOT A CERTIFICATE OF SEAWORTHINESS AND RELATES ONLY TO THE FOLLOWING CARGO.

DECK CARGO: INSPECTION OF CHOCKING, LASHING, AND SECURING DECK LOAD CONSISTING OF:

1 case red label, 1 container red label, 9 containers (contents not sighted).

SAID TO BE: 75 tons

NOT FULL DEADWEIGHT CARGO

Draft of water loaded, Forward ft. in. Aft. ft. in. Mean ft. in.
Freeboard ft. in.

THE FOREGOING INSPECTION WAS UNDERTAKEN AND THIS CERTIFICATE IS ISSUED ON THE FOLLOWING TERMS AND CONDITIONS:

While the Officers, Directors, and Committees of National Cargo Bureau, Inc. use their best endeavors to insure that the functions of the Bureau are properly executed, neither such Officers, nor such Directors, nor such Committees, nor the Bureau, nor its surveyors, employees, representatives or agents, are under any circumstances whatever to be held responsible for any inaccuracy in any report or certificate issued by the Bureau or its surveyors, or for any error of judgment, default or negligence of the surveyors or other employees, representatives or agents of the Bureau. This certificate covers only the cargo herein described as having been loaded at place of issuance of this certificate, and under no conditions is it to be deemed to cover any other cargo whether loaded at place of issuance of this certificate, or any other port. This certificate shall not be valid if upon sailing from any loading port and/or any fueling port and/or during any part of the voyage, the vessel's draft shall exceed that permitted by the law of her flag and/or the draft designated for the vessel in the Classification Society in which she may be classed.

T. J. STEVENSON & CO./METEOR LINES

VESSEL AGENT— 10.00
FEE $
ADD'L CHGS (if any)
EXPENSES -10.00
TOTAL $

Original Signed by C.E. Schubert, Senior Surveyor, for
Surveyor.

N. DE CASTRO

EXHIBIT 97--NATIONAL CARGO BUREAU, CERTIFICATE OF LOADING

A 95

A69957

CERTIFICATE OF LOADING
— OF —
NATIONAL CARGO BUREAU, INC.

Issued, as to dangerous cargo and grain in bulk, under authority of the United States of America, Commandant, United States Coast Guard, pursuant to (1) the provisions of the International Convention for the Safety of Life at Sea, 1960; (2) the provisions of section 4472, Revised Statutes, as amended (46 U. S. C. 170 (7) (a)); (3) the provisions of section 4417, Revised Statutes, as amended (46 U. S. C. 391); (4) the Magnuson Act of August 9, 1950, amending the Espionage Act (50 U. S. C. 191a); and (5) the provisions of the Act of July 5, 1884, as amended (46 U. S. C. 2) and of section 4403, Revised Statutes, as amended (46 U. S. C. 372).

NEW YORK, N. Y., January 13, 1971

This is to Certify, *That the* BRAZ. (flag), M/V AMAZONIA (Name of Vessel)

whereof G. SERRA *is Master, of* 9451 *Net Tons, built at* ANGRI DAS REIS

in 1970, *bound for* SOUTH AMERICA DIRECT

has been under the inspection of a surveyor or surveyors of NATIONAL CARGO BUREAU, INC., at this port from time to time during the course and in respect of the loading of cargo hereinbelow specified; that so far as it came under the observation of such surveyor or surveyors, the stowage of dangerous cargo and of grain in bulk was in accordance with the regulations of the Commandant, United States Coast Guard, and the stowage of other cargo not subject to Coast Guard Regulations was in accordance with the recommendations of National Cargo Bureau, Inc.

THIS CERTIFICATE IS NOT A CERTIFICATE OF SEAWORTHINESS AND RELATES ONLY TO THE FOLLOWING CARGO.

Steel plates, bales synthetic rubber, cases heavy lift machinery, steel sheets, unboxed tractors, pieces buckets, copper wire bars, cases chemicals, containers (contents not sighted), general cargo.

ABOUT 1452 tons

BLOCK CARGO: SEE CERT. #S20451

DUPLICATE

RECEIVED JAN 26 1971 NATIONAL CARGO BUREAU, INC. NEW YORK

AT FULL SEAWEIGHT CARGO

Draft of water loaded, Forward ft. in. Aft. ft. in. Mean ft. in.
Freeboard ft. in.

THE FOREGOING INSPECTION WAS UNDERTAKEN AND THIS CERTIFICATE IS ISSUED ON THE FOLLOWING TERMS AND CONDITIONS:

While the Officers, Directors, and Committees of National Cargo Bureau, Inc. use their best endeavors to insure that the functions of the Bureau are properly executed, neither such Officers, nor such Directors, nor such Committees, nor the Bureau, nor its surveyors, employees, representatives or agents, are under any circumstances whatever to be held responsible for any inaccuracy in any report or certificate issued by the Bureau or its surveyors, or for any error of judgment, default or negligence of the surveyors or other employees, representatives or agents of the Bureau. This certificate covers only the cargo herein described as having been loaded at place of issuance of this certificate, and under no conditions is it to be deemed to cover any other cargo whether loaded at place of issuance of this certificate, or any other port. This certificate shall not be valid if upon sailing from any loading port and/or any fueling port and/or during any part of the voyage, the vessel's draft shall exceed that permitted by the law of her flag and/or the draft designated for the vessel in the Classification Society in which she may be classed.

T. J. STEVENSON & CO. INC. AGENTS

VESSEL AGENT— 33.00
FEE $
ADD'L CHGS (if any)
EXPENSES
TOTAL $

Surveyor.

A 96
Exhibit 97

A 97

EXHIBIT 108--NATIONAL CARGO BUREAU, CERTIFICATE AUTHORIZATION SHEETS

PAGE 1

NATIONAL CARGO BUREAU, INC.
CERTIFICATE AUTHORIZATION SHEET

Port NEW YORK
S.S. M.V. AMAZONAS 420367 Flag GER
Master G. SEBA
Agent J. J. STEVENSON
Operator NEUMAR

Destination S/AMERICA Via DIRECT
Notified
Loaded: PHILA-ST. JOHNS, BALTO
Holds Passed ALL

Date-Time-Pier Vessel Passed 1/15/71 36ER 1500
Commenced Loading 1/15/71
Inspections (Date-Time-Pier) Surveyor

1/15/71 1500 36ER
1/16/71 36ER
1/18/71 36ER/16C

Completed Loading 1/19/71
Sailed 1/22/71
Sailing Draft (Actual) F. A. M.
Sailing Draft (Corr.) F. A. M.
Sailing Freeboard (Actual) Corr.
Particulars of Ship AMER DAB CLASS

When Built 1970 Where Built ~~GERMANY~~
Net Tonnage 4457 Seasonal D.W. T.P.I.
Assigned Summer Draft 24' 5½" F.B. 6' 5½"
Seasonal Corr. F.W. Allow. Density Corr.

N.C.B. FORM #75 (REV. 9/69)

Call/Suitt // Amazonas (Germany)

A 98
Exhibit 108

PAGE 2

S.S. M.V. ARIZONA

Under Deck Cargo (Certificate No. A –)

STL PLATES, BARS, SHAPES & RUBBISH
C/S MISC MACH'Y, STL SHTS
CAST TRACTORS
PCS BONNETS
COPPER WIRE BAR
PKGS CHEM. CONTAINERS (CONTENTS NOT SIGHTED)

GENERAL

Loaded: General 1462 L.T. Bulk L.T.

On-Deck Cargo (Certificate No. S –)

1 C/S R/L
1 CONTAINER R/L
4 CONTAINERS

Loaded 75 L.T.

Fees

"A" Cert. 33.00

"S" Cert. 10.00

Cert. Read.

Sp. Survey

Addl. Chgs.

Expenses

Total 43.00

Signed:

Date

Date

Date 6/11

NATIONAL CARGO BUREAU SURVEYOR(S)

N.C.B. FORM #75A (REV. 9/69)

1/15/71 AMARILLO A$A 15[illegible]

No 4/H Discharge Center
with AC-F/A-6s
w/pilot

No 2 C/O [illegible] with Chevron (2) jets 4E's
inside [illegible] with 3yr FALS
2/0 IP
4/0 F/SG Copper Cigars
Class Cadets C/S out 2nd
w/pilot. 4/0 W SG, Fuzzys
Cheer.

No 3 Discharge Center
A/SG with Cadets
w/pilot [illegible]

1/18/71 Clear 1600

No 4/H F/SG Copper
Cigars A/SG Pyle
[illegible] with CIS Cadet

[illegible]

[illegible]

BEST COPY AVAILABLE

A 100
Exhibit 108

TO CASRO:

AMAZONAS 1-16-71 0930 CLEAR

#1 LH F/AC.

COPPER CIGARS DRAFT
STOWED 8 BARS HIGH
CRISS CROSS

#2 LH FWD SKYHOOK
COPPER CIGARS DRAFT STOWED

#2 LH AFT 3Q
DIAT WEEDKILLER

#3 LH F/AC
COPPER CIGARS
DRAFT STOW

A 101

INTERROGATORIES OF UNITED TERMINALS, INC. PROPOUNDED TO THIRD PARTY DEFENDANT NEW JERSEY EXPORT MARINE CARPENTERS, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FOOTNER & CO., INC., ET AL.,

Plaintiff,

-against-

72 Civ. 2402 EW

SS AMAZONIA, her engines, boilers, etc., COMPANHIA DE NAVAGACAO MARITIMA, NETUMAR, T.J. STEVENSON & CO., INC. UNITED TERMINALS, INC. and NEW JERSEY EXPORT MARINE CARPENTERS, INC.

Defendants.

INTERROGATORIES OF UNITED TERMINALS, INC. PROPOUNDED TO THIRD PARTY DEFENDANT NEW JERSEY EXPORT MARINE CARPENTERS, INC. TO BE ANSWERED UNDER OATH

1. If third-party defendant New Jersey Export Marine Carpenters, Inc., hereinafter "Marine Caprenters", furnished any services in connection with the loading and securing cargo on the SS AMAZONIA at the port of New York in January 1971 please state:

(a) The dates on which such services were performed;

(b) Who requested such services be performed;

(c) Who paid Marine Carpenters for said services;

(d) Did Marine Carpenters have any contract or agreement with any person or company for the performance of said services? If so, state:

(i) With whom and when said contract or agreement was made

(ii) The full and complete terms thereof, or, if in writing, annex a copy thereof to your answers

(e) The full details of all services so performed

(f) The nature and size of all materials used in performing said services including,

(i) if wood, the dimensions thereof

(ii) If wire, the number of strands, diameter, and length.

(iii) a description and dimensions of any turnbuckles and nails used.

(g) Whether said materials were new or used and

(i) If new, by whom and from whom they were purchased or supplied

(ii) If used, by whom they were furnished

(iii) Who paid for said materials

(h) Describe in particular the securing and lashing of two tractors stowed in #2 tween deck area, describing

(i) the details of all tomming, bracing, chocking, and shoring giving dimensions of material used and how placed,

(ii) the details of lashing, specifying (1) the size, number and lengths of wire used (2) how and where the ends of each wire were secured (3) the number of turnbuckles used (4) the number of pad eyes used and where each was located

(iii) whether any other cargo was stowed between the tractors and the ship's sides and if so, (1) the nature of such cargo and (2) what, if any use was made of it in securing the tractors

(i) Did Marine Carpenters, receive any instructions or directions as to securing cargo in the AMAZONIA, and, particularly, as to securing the two tractors in #2 tween deck area? If your answer is in the affirmative state (A) the name and employer of such person, and (B) the particular instructions or directions so given

(j) Who directed and supervised the work of securing the two tractors stowed in #2 tween deck area, stating the name and employer of such person(s).

(k) Upon completion of the work of securing the two tractors in #2 tween deck area did Marine Carpenters obtain the approval of any officer or person? If so, state the name (or otherwise describe him so that he may be identified) of such person and his employer.

2. Did Marine Carpenters cause any investigation to be made into the casualty which occurred on the AMAZONIA after leaving New York in January, 1971 and which resulted in the diversion of the vessel to Bermuda? If your answer is in the affirmative, state:

(a) By whom, when and where was said investigation made.

(b) Were any reports of investigation received? If so, state fully the substance of said reports, or if in writing annex a copy of same to your answers.

3. Has Marine Carpenters retained or obtained any material used in securing cargo on the AMAZONIA and particularly used in securing the two tractors stowed in #2 tween deck area? If so, state where and in whose possession the same now is.

Dated: New York, New York

JUN 15 1973

Yours, etc.,

SYMMERS, FISH & WARNER

BY: Frederick Fish
A Member of the Firm
Attorneys for Third Party Defendant
United Terminals Inc.
Office and Post Office Address
345 Park Avenue
New York, New York 10022

Interrogatories of United Terminals, Inc. Propounded to Third Party Defendant New Jersey Export Marine Carpenters, Inc.

TO:

Messrs. Hill, Rivkins, McGowan & Carey
Attorneys for Plaintiffs
96 Fulton Street
New York, New York 10038

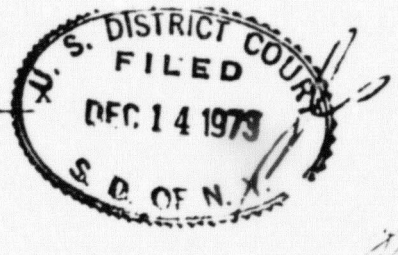
Messrs. Cichanowicz & Callan
Attorneys for Defendant Netumar
80 Broad Street
New York, New York 10004

Messrs. McHugh, Heckman, Smith & Leonard
Attorneys for Defendant Export
80 Pine Street
New York, New York 10005

A 105

ANSWERS TO INTERROGATORIES BY NEW JERSEY EXPORT MARINE CARPENTERS, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



FOOTNER & CO., INC., et al.,

Plaintiffs,

- against -

72 Civ. 2402 (EW)

S.S. AMAZONIA, her engines, boilers, etc., COMPANHIA DE NAVAGACAO MARITIMA, NETUMAR, T. J. STEVENSON & CO., INC., UNITED TERMINALS, INC. and NEW JERSEY EXPORT MARINE CARPENTERS, INC.,

ANSWERS TO INTERROGATORIES

Defendants.

Defendant, NEW JERSEY EXPORT MARINE CARPENTERS, INC., answering the interrogatories of defendant UNITED TERMINALS, INC., alleges upon information and belief, as follows:

1. (a) January 14th, 15th, 16th and 18th, 1971.

(b & c) Companhia de Navagacao Maritima, Netumar by its representative, Netumar International Inc.

(d) Yes. New Jersey Export Marine Carpenters, Inc. was
(e) hired by Netumar International Inc. on a time and
(f) material basis to furnish labor for carpentry and
(g) lashing work on ships of Netumar's principal at New York. See attached Exhibits A thru J, covering labor and materials supplied by New Jersey Export Marine Carpenters, Inc., all of which were new and were paid for by Netumar International Inc.

(h) The tractors were boxed in with 4 x 6 timbers and braced and shored off to the skin of the ship by 4 x 4 timbers. Wire lashing and turnbuckles were used to secure the units to each other and to pad eyes on the vessel. The wire was furnished by the vessel or Netumar International Inc. and was either 5/8" or 3/4" dimension. There were other cargoes, cases and containers between the two units and the ship's sides.

(i) The tractors were secured under the direction and supervision of the master and the chief officer of

the vessel, and Messrs. Piper and Maia, Netumar's port captains. The tractors were secured to their satisfaction.

(j) William J. Montella Jr., of New Jersey Export Marine Carpenters, Inc.

(k) Yes. The master and/or the chief officer.

2. Yes. John P. Conroy, Esq., attended at Bermuda with James F. Lindsay in February 1971. Mr. Conroy was refused permission to go aboard the vessel or speak to any of the crew of the vessel. Mr. Lindsay, in the company of others, took various photographs and rendered a report, a copy of which is annexed hereto as Exhibit K.

3. No.

Dated: New York, New York

Yours, etc.,

McHUGH, HECKMAN, SMITH & LEONARD
Attorneys for New Jersey Export
Marine Carpenters, Inc.

By: _____
A Member of the Firm
Office & P. O. Address
80 Pine Street
New York, New York 10005

TO:

SYMMERS, FISH & WARNER
Attorneys for United Terminals, Inc.
Office & P. O. Address
345 Park Avenue
New York, New York 10022

(Verified)

A 107

Answers to Interrogatories by New Jersey Ex[illegible]
Marine Carpenters, Inc.

DAILY LABOR RECORD

New Jersey Export Marine Carpenters, Inc.

S. S. Arizonia DATE Jan 15, 1971

PIER 36 ER ORDER No 1017

DESCRIPTION OF LABOR PERFORMED

No MEN		STRAIGHT TIME		OVERTIME			
		A. M.	P. M.	P. M.	P. M.	A. M. P. M.	A. M. P. M.
	FOREMAN						
	ASS'T FOREMAN						
	CARPENTER						

MATERIAL SUPPLIED

150 Pcs 4"x6"x18'
100 Pcs 4"x4"x14'
200 LB's Nails Ass't Comm.

142

SIGNED BY James Flynn

Exhibit A

Marked for Ident. EXB.

DATE 3/6/74 H. PROKOP

A 108

Answers to Interrogatories by New Jersey Export Marine Carpenters, Inc.

DAILY LABOR RECORD

New Jersey Export Marine Carpenters, Inc.

S. S. [illegible] DATE [illegible]

PIER [illegible] ORDER No [illegible]

DESCRIPTION OF LABOR PERFORMED

No. MEN		STRAIGHT TIME		OVERTIME			
		A. M.	P. M.	P. M.	P. M.	A. M. P. M.	A. M. P. M.
	FOREMAN						
	ASS'T FOREMAN						
	CARPENTER						

MATERIAL SUPPLIED

1 Foot of Lumber.

SIGNED BY [illegible]

242

Exhibit B

A 109

Answers to Interrogatories by New Jersey Export Marine Carpenters, Inc.

DAILY LABOR RECORD

New Jersey Export Marine Carpenters, Inc.

S. S. AMAZONIA DATE Jan 14 1971

PIER 36 F.R. ORDER NO. 1612

DESCRIPTION OF LABOR PERFORMED

Contract Stevedore work performed.

No. MEN		STRAIGHT TIME		OVERTIME			
		A. M.	P. M.	P. M.	P. M.	A. M. P. M.	A. M. P. M.
1	FOREMAN		5				
	ASS'T FOREMAN						
11	CARPENTER		5				
1							

MATERIAL SUPPLIED

SIGNED BY

Exhibit C

Identified EXB. C for Identi. DATE 3/6/73 H PROKOP

A 110

Answers to Interrogatories by New Jersey Export Marine Carpenters, Inc.

DAILY LABOR RECORD

New Jersey Export Marine Carpenters, Inc.

S. S. OMAR ONIA DATE Jan 15, 1971

PIER 36 ER. ORDER No. 1012

DESCRIPTION OF LABOR PERFORMED

No. MEN		STRAIGHT TIME		OVERTIME			
		A. M.	P. M.	P. M.	P. M.	A. M. P. M.	A. M. P. M.
1	FOREMAN	7/12	7/5				
	ASS'T FOREMAN						
6	CARPENTER	7/12	7/5				

MATERIAL SUPPLIED

2 of 7

SIGNED BY

Exhibit D

A 111

Answers to Interrogatories by New Jersey Export Marine Carpenters, Inc.

DAILY LABOR RECORD

New Jersey Export Marine Carpenters, Inc.

S. S. AMAZONIA DATE June 15, 1971

PIER 36 E.R. ORDER NO. 10 12

DESCRIPTION OF LABOR PERFORMED

NO. MEN		STRAIGHT TIME		OVERTIME			
		A. M.	P. M.	P. M.	P. M.	A. M. P. M.	A. M. P. M.
1	FOREMAN	8/12	1/5				
	ASS'T FOREMAN						
	CARPENTER						
2	Laslos.	8/12	1/5				

MATERIAL SUPPLIED

3 of 7

SIGNED BY

Exhibit E /

A 112

Answers to Interrogatories by New Jersey Export Marine Carpenters, Inc.

DAILY LABOR RECORD

New Jersey Export Marine Carpenters, Inc.

S. S. Amazonia DATE Jan 16 1971

PIER 36 E.R. ORDER No. 10 12 XII

DESCRIPTION OF LABOR PERFORMED

SAT. OT

No. MEN		STRAIGHT TIME		OVERTIME			
		A. M.	P. M.	P. M.	P. M.	A. M. P. M.	A. M. P. M.
1	FOREMAN	8/12	1/5				
	ASS'T FOREMAN						
6	CARPENTER	8/12	1/5				
	same men as listed						

MATERIAL SUPPLIED

4 OF 7 SIGNED BY

Exhibit F

A 113

Answers to Interrogatories by New Jersey Export Marine Carpenters, Inc.

DAILY LABOR RECORD

New Jersey Export Marine Carpenters, Inc.

S. S. Amerocoil DATE Jan 15, 1971

PIER 35 E.R. ORDER NO. 10 12

DESCRIPTION OF LABOR PERFORMED

SAT OT

NO. MEN		STRAIGHT-TIME		OVERTIME			
		A. M.	P. M.	P. M.	P. M.	A. M. P. M.	A. M. P. M.
1	FOREMAN	8	5				
	ASS'T FOREMAN						
	CARPENTER						
2	Fishers	8	5				

MATERIAL SUPPLIED

5 of 7 SIGNED BY [signature]

Exhibit G

A 114

Answers to Interrogatories by New Jersey Export Marine Carpenters, Inc.

DAILY LABOR RECORD

New Jersey Export Marine Carpenters, Inc.

S.S. AMAZONIA DATE JAN 15, 1971

PIER #36 EAST RIVER ORDER NO. #1012

DESCRIPTION OF LABOR PERFORMED

NO. MEN		STRAIGHT TIME		OVERTIME			
		A. M.	P. M.	P. M.	P. M.	A. M. P. M.	A. M. P. M.
1	FOREMAN	8/12	1/5	5H			
	ASS'T FOREMAN						
	CARPENTER						
8	LASHERS	8/12	1/5	5H			

MATERIAL SUPPLIED

6 of 7

Exhibit H

A 115

Answers to Interrogatories by New Jersey Export Marine Carpenters, Inc.

DAILY LABOR RECORD

New Jersey Export Marine Carpenters, Inc.

S. S. AMAZONIA DATE Jan 18 1971

PIER #3 East River ORDER No. #1012

DESCRIPTION OF LABOR PERFORMED

NO. MEN		STRAIGHT TIME A. M.	STRAIGHT TIME P. M.	OVERTIME P. M.	OVERTIME P. M.	OVERTIME A. M. P. M.	OVERTIME A. M. P. M.
1	FOREMAN	8/12	1/5	5/9			
	ASS'T FOREMAN						
8	CARPENTER	8/12	1/5	5/9			
	Sawman Included						

MATERIAL SUPPLIED

SIGNED BY

7 of 7

Exhibit I

United Exh. 4 (A)

8/13/73

A 116

Answers to Interrogatories by New Jersey Export Marine Carpenters, Inc.

[illegible] AND OWNERS
C METLAND LINE
T J STEVENSON & Co. GEN AGENTS
90 BROAD STREET
NEW YORK, N.Y. 10004

DATE ____ 19__
PLEASE REFER TO INVOICE NO. 1-173
JOB NO. 1012
PIER: 36 ER 1941
WORKED FROM 1/15 TO 1/ 19

LABOR:	HOURS		RATE	AMOUNT	TOTAL
OREMAN	S.T. @	$		$	$
[illegible]	O.T. @				
OREMAN	P.H. @				
SST. FORE.	S.T. @				
SST. FORE.	O.T. @				
SST. FORE.	P.H. @				
ARPENTERS	S.T. @				
ARPENTERS	O.T. @				
ARPENTERS	P.H. @				
	HRS.				
AN MONEY:					
ARPENTERS	S.T. @	$	30		
ARPENTERS	O.T. @		45		
ARPENTERS	P.H. @		60		
	HRS.				$
RAVEL TIME:					
OREMAN	T.T. @	$		$	$
SST. FORE.	T.T. @				
ARPENTERS	T.T. @				
	HRS.				$
RFARE	MEN @	$	1.10	$	$

TERIAL SUPPLIED:		RATE	AMOUNT	TOTAL
UMBER	@			
x 12 15'/19'	5461 BF @	.14 PER BF	756 10	
x 4 10'/14'	1867 BF @	.14 PER BF	261 38	
[illegible]	7[illegible] BF @	.[illegible] PER BF	34 [illegible]	
	@			1051 17
	@			
	@			
	@			
[illegible] (USED)	[illegible] BF @	6.50 PER M BF		55[illegible] [illegible]
	@			
	@			
	@			
	@			

1 LABOR RECORD SLIPS ATTACHED.

TOTAL: $ 1607 7

1 OF 1

~~RE: SUBJECT TO DEDUCTIVE DITEING.~~

Remainder is Lindsay survey.

Marked Exh. J 5/6/73

EXH. 4 DATE 5/6/73 For Ident. H. PROKOP

Exhibit J

A 117

Answers to Interrogatories by New Jersey Export Marine Carpenters, Inc.

OFFICE OF
JAMES F. LINDSAY
MARINE CONSULTING ENGINEERING
SURVEYORS AND APPRAISERS
76 BEAVER STREET
NEW YORK 5, N. Y.
CABLES: "INVERMARK" NEW YORK

NEW YORK, October 13, 1971

REPORT OF SURVEY

This is to certify that I, the undersigned, did, at the request of Messrs. McHugh, Heckman, Smith & Leonard, and on behalf of New Jersey Export Marine Carpentry, Inc. survey the

No. 1346

MOTORVESSEL "AMAZONIA"

3539 Gross Tons

On February 6th, 1971, while she lay afloat in a partly discharged condition at Bermuda, B.W.I., in order to ascertain the cause of cargo breaking stow.

Surveyors Attending:

Mr. Joseph McCoy	on behalf of	Owner
Captain Joseph Maier	" "	" Owner
Mr. James Parker	" "	Lloyd Register/Salvage Asso.London
Mr. Edward Ganley	" "	P. & I. Club
Mr. F. H. McNamara	" "	P. & I. Club
Mr. Richard Sheriff	" "	P. & I. Club

The Motorvessel "AMAZONIA" is a liner type vessel, three cargo holds forward of the superstructure 50', 71½' and 82' in length, flush deck vessel with a 'tween deck in each hold, three folding type hatch covers on main deck, the deck gear consists of four (4) 5 and one (1) 3 ton cranes, four (4) 5 ton and one (1) 40 ton derrick. Built in Brazil, January 1970, a 5400 B.H.P. main unit propels the vessel at 16 knots.

Details of log entries were not made available. It was stated, however, by Mr. McCoy that whilst on a sea passage from Baltimore toward Brazil, that after having encountered considerable heavy weather on January 20th, 1971, at about 2200 hours a starboard list of approximately 30 degrees developed, and extremely confused seas were stated to have existed at the time.

Upon boarding the vessel, it was observed that the No. 2 hatch was open and the No.2 'tween deck pontoons had been removed, the 'tween deck was generally free of cargo, the lower hold was partly discharged. Cargo remaining in lower hold No. 2 appeared to consist of a motor crane body, which was surrounded by water soaked debris and remnants of damaged cargo. (Photo No. 6)

Heavy machinery units that had been discharged were on the open pier. (Photo Nos. 4 and 5)

Exhibit K

BEST COPY AVAILABLE

A 118

Answers to Interrogatories by New Jersey Export Marine Carpenters, Inc.

The several units landed on the pier were sighted "as is" and were stated by Mr. Sheriff to have been located in original stowage as follows:-

Photo No. 5 and 24	Location
The caterpillar tractors	No. 2 lower hold, stbd. side
One Clark dirt mover	No. 2 lower hold, fore and aft port side.
Photo Nos. 4, 25, 26, 37 and 38	
Two G.H. Terex dirt movers	Thwartships forward end No. 2 'tween deck.
Photo No. 27	
Water tight door	Escape trunk No. 2 hold, main deck level.
Photo No. 28	
Cargo container	No. 2 'tween deck forward stbd. side.
Photo No. 29	
Seven of a total of nine, 'tween deck hatch pontoons	No. 2 'tween deck hatch
Photo No. 30	
Forward pontoons No. 2 'tween deck	No. 2 'tween deck, hatch opening.
Photo No. 31	
Second hatch pontoon from forward, No. 2 'tween deck hatch opening.	No. 2 'tween deck hatch opening.
Photo No. 32	
Cargo containers	Weather deck.
Photo No. 33	
Paper machine	No. 2 'tween deck square of hatch
Photo Nos. 34, 35 and 36	
Two cases containing manifold kits marked "Alco"	No information.

Answers to Interrogatories by New Jersey Export Marine Carpenters, Inc.

Photo No. 8

Only a superficial examination of No. 2 lower hold was only possible due to the water soaked debris residual cargo remaining, such examination revealed no structural damage to the vessel in way of lower hold.

Number 2 'Tween Deck

Forward Bulkhead (No. 110)

The ring fastener on the flange of No. 7 bulkhead stiffener (counting from port), ring link broken. (Photo No. 9)

The staple eye on the flange of No. 4 bulkhead stiffener (counting from starboard) pulled adrift at lower welded connection. (Photo No. 4)

The ring staple eye on the flange of No. 7 bulkhead stiffener (counting from starboard) pulled off. (Photo No. 10)

Starboard Shell

Shell frames counting from forward

Numbers 7, 8, 9 and 10 set over at 4, 2 and 5 and 5 feet above deck respectively. (Photo No. 12)

Numbers 10, 11 and 12 were cropped at lower ends in order to accommodate three temporary doublers fitted over shell ruptures immediately above 'tween deck, located between frames 10 and 11, 11 and 12 and 12 and 13. (Photo No. 13)

Number 18 lashing eye distorted.
Number 19 set over.
Number 20 distorted in way of cargo lashing staple.
} Photo No. 14

Deckhead Starboard (Photo No. 15)

Second bay from aft - Smoke dectector pipe guard pulled down.

Third bay from aft - Forward hatch stiffener and pipe guard set up.

Fourth bay from aft - Forward hatch stiffener and pipe guard set up.

Fifth bay from aft - Cable run casing, distorted and set up, guard missing.

Port Shell

Port side shell frame No. 14 from forward cargo lashing staple missing. (Photo No. 17)

Answers to Interrogatories by New Jersey Export Marine Carpenters, Inc.

Conclusion

There are several points with respect to this survey that raise questions, namely -

1) The length of time of the alleged casualty and survey request (15 days).

2) The complete lack of cargo battens in No. 2 hatch area.

3) The watertight door (Photo No. 27) this door appeared to have most recently been completely overhauled, heat applied to closing dogs in order to free up a frozen condition and new hinge pins fitted.

A main deck water-tight door in condition such as it can not be properly secured, could under conditions where heavy seas are running, be the main contributing factor in flooding of a cargo compartment, resulting in an extremely unstable condition.

JAMES F. LINDSAY
Marine Consulting Engineers

BY: James F. Lindsay

AFTERNOON SESSION

1:30 p.m.

THE COURT: Proceed.

MR. ALLEN: Mr. Piper.

R I C H A R D A . P I P E R , called as a witness by the defendants, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ALLEN:

Q Mr. Piper, by whom are you employed?

A Netumar International.

Q In what capacity?

A As a Port Captain.

Q Did you hold the same position in 1971?

A Yes, sir.

Q Can you describe for me briefly what your duties entailed at that time?

A The preplanning of the vessel's operations while in U.S. ports, discharging and loading.

Q Did you confer with other people to do that or do it by yourself?

A Tentative plans were made prior to the vessel's initial arrival, and as far as the planning of all the programs for the vessel's coastwise trip it was taken up with

the vessel's officers and whatever port the vessel was arriving into.

Q We have the stowage plan, Exhibit 42, already in evidence. Did you look at the stowage plan before the ship leaving New York?

A Yes, sir, I did.

Q Do you recognize that as a copy of the plan?

A Yes. sir.

Q To the best of your recollection, is that the way the No. 2 tween deck was stowed?

A Yes, sir.

Q Who did the loading of that ship?

A The United Terminals.

MR. WARNER: Where and when, if you please?

MR. ALLEN: I am talking about the Amazonia when she loaded at New York in the latter part of January, 1971, just before she sailed for South America.

A I believe it was United Terminals.

Q Who did the lashing and securing on that ship at that time?

A A company by the name of New Jersey Export. ___/

Q Do you, meaning Netumar, have anything to do with the lashing or the loading or securing of that cargo?

MR. WARNER: A double question. Objection.

properly tied?

A I would perhaps, to take the meaning of an English word say duly would mean amply.

Q Do you have familiarity with nautical language in the Portuguese tongue?

A To some degree, yes, sir.

Q Would you say that you have an extensive knowledge of nautical language?

A No, sir.

MR. MC HUGH: That's all, your Honor.

THE COURT: Any further questions?

You may step down.

(Witness excused.)

MR. ALLEN: Mr. Ganly.

E D W A R D F . G A N L Y , called as a witness by the defendant, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ALLEN:

Q What is your occupation, Mr. Ganly?

A I am a marine surveyor, naval architect.

Q Can you give us a brief rundown on your background and experience in those chosen fields?

A I graduated with a degree in Naval Architecture

A Yes, sir, these are the machines.

In fact, this one which is No. 1 of this Exhibit 47, is the one that I referred to in my report when I said one of the arms was ceriously bent, and that's the arm that I had in mind.

Q What is the number on the back of that?

A That is No. 1 in red.

Q No, in blue.

A Exhibit 47.

Q Did you examine the wires that were hanging from these Terexes?

A Yes, sir, I did.

Q Did you notice whether or not any of them were broken?

A Yes, sir, I did.

Q And what did you see?

A I saw the broken wire and it was still in the Terex.

Q Still attached to the Terex?

A Yes, sir.

Q Did you see any turnbuckles while you were there?

A Yes, I did.

Q Will you describe the type of turnbuckle that you saw?

A The turnbuckles were made up of flat bar welded to hexagonal nuts at each end. The flat bars were about 19-3/8 inches long, 1-3/16 inches x 5/16 inches thick.

The rod that went through the hex nut was 15/16 inches in diameter and about 11 inches long at each end with a clevis welded to it, which is just a U with a hole in ot for securing, and that clevis was made of flat bar 2 inches wide, 4 inches long and again 5/16 inches thick.

Q Did you see any damaged turnbuckles?

A I saw one damaged turnbuckle where the side bar had come away from the nut.

Q Wasn't where it should have been welded to the nut?

A Yes, the weld had failed.

Q Did you inspect the sides of the ship within that No. 2 tween deck compartment?

A Yes, I did.

Q Assuming that the lashing wires of these Terexes went from the machines to points on the side of the ship, did you see any evidence of defect in the ship's structure on either side?

A I didn't find any defects in the ship's structure at all, except the damage where the Terexes went through the side.

A Yes, sir.

Q Do you have any opinion as to the amount of force that would be necessary to apply to that turnbuckle to carry away the weld?

A No, sir.

Q And you didn't make a study of that for anybody?

A No, sir.

Q Do you have any opinion now as to the amount of force that would be necessary to apply to that?

A One can't have an opinion. I would have to hypothesize in what manner the weld parted and then it is just a simple calculation, but I did not do it.

Q From a naval architect's point of view, do you have an opinion as to the necessity of keeping lashings on a heavy lift taut when the vessel is working in a sea wave?

A Yes, indeed I do.

Q Will you please tell us what it is?

A That all heavy lifts at sea should be kept from moving, and when I approve a tow going to sea, I will not approve wire.

Q Why?

A Well, when a tow goes to sea as an unmanned tow, no one can tighten up the wire.

On a ship where there is a crew you can have wire and turnbuckles and they must be tightened up from time to time.

Q From time to time.

What determines the amount of time?

Can you help us on that?

A No, sir. I'm not a seagoing man. I can only say what I have read in logbooks, and I have read many logbooks, and there are notations that the mate goes around and tightens up the lashings and the turnbuckles on deck cargo or such other cargo as is lashed with a turnbuckle.

Q Sir, you are a graduate of Webb University, one of the finest institutions in the country. You took oceanography there, didn't you?

A Yes, sir. Not at Webb, but I took it later.

Q And you are aware of the forces that come into play when a ship pitches and rolls and heaves?

A Yes, sir.

Q Is it fair to say that if a vessel is out there like on a pond, it is not necessary for a mate to go out there and tighten the turnbuckle?

A No, I wouldn't say that.

Q If it is rolling vigorously, would you say it

should be tightened up more often than when it is flat?

A Yes, I would say so. That is common sense, isn't it?

Q Yes.

But we are agreed when you have heavy lifts on a vessel at sea, it is requisite, it is essential that somebody go about and set up on the turnbuckles?

A I would say so, yes.

Q I thank you.

CROSS-EXAMINATION

BY MR. McHUGH:

Q You inspected the ship and found that there were two types of securing rings or staples.

Was that true, Mr. Ganly, in all of the cargo compartments or was it true only of No. 2 upper tween deck?

A I can only answer that insofar as No. 2 is concerned. I did not make the same inspection in the other holds.

Q One of the types of fastening devices you found was a staple with a ring passed through it, a loose ring.

Do you recall that?

A Yes, I do.

Q And did you see staples without rings of the smaller type?

holding together.

THE COURT: I see. All right.

Does that trigger off any further questions that anyone else wants to ask?

MR. MC HUGH: Yes, it does.

May I?

THE COURT: You may.

RECROSS EXAMINATION

BY MR. MC HUGH:

Q You don't really mean, I suppose, Mr. Ganly, that it suggests the length of the wire?

A No, no.

Q Rather, it suggests the degree of tautness?

A No, what I meant was the amount you would tighten your turnbuckle and bring the screwed parts in would be a function of how long the wire is, because the longer the wire is the more stretch you would get, you see.

THE COURT: That's what I understood.

Q But if you took up that wire as tight as you could possibly get it before you affixed your turnbuckle, it won't be a function of length of wire, it would be more a function of the degree of tautness before you applied the turnbuckle, won't it?

A No. I assume anyone who leaves cargo secured is

going to tighten it up just as taut as he can get it, and then after that the wire grows and it has to be tightened up. The amount it grows depends on the length of wire.

Q The amount what?

A The amount that it grows in length --

Q Stretches?

A It isn't a stretch, actually, it is a growing of the wire. The strand straightens out a little bit. That is a function of the length of the wire.

So that if you had, say, a short piece of wire, eight or ten feet, with a turnbuckle, you won't get as much slackness in it as if you had fifty feet. That's all I am trying to say.

Q What is the length of the flat bar in this photograph which comprises the middle?

A 19-3/8 inches.

Q Then would it be fair to say that about two inches of -- what is the other part, the bolt?

A Yes, I guess.

THE COURT: The screw part.

Q The screw part protrudes to the inner section of that flat bar?

A It could be, yes. I mean, it is hard to judge from a photograph. I hesitate to do that.

MR. ALLEN: Yes, sir. I have given copies to counsel here, and we are agreed this should be marked as Exhibit 80 now.

THE COURT: It is received in evidence.

XX (Plaintiffs' Exhibit 80 received in evidence.)

MR. ALLEN: Mr. Parker.

JAMES HAMILTON PARKER, called as a witness by the defendants, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ALLEN:

Q Mr. Parker, will you tell us where you live?

A I live in Dannorshire, Bermuda.

Q What do you do, sir?

A I am an official marine surveyor, an independent one. I am not employed fully by anybody.

Q Were you called in to attend the Amazonia when she put into Bermuda towards an end of January in 1971?

A Yes, sir, I was.

Q Will you tell us when you first saw that ship and the condition in which you found her.

A Well, the ship, when I boarded her, she had a very heavy starboard list, and asking what caused the list nobody didn't know, they thought some of the cargo had shifted or

THE COURT: Did you find that in your notes?

THE WITNESS: Yes.

Q On the 26th and 27th?

A Yes.

Q One on each day?

A Yes.

Q Did you see any wires hanging from those Terexes?

A I couldn't say.

Q I show you Exhibit 30, which is a picture of a door lying on deck. Do you remember that door?

A Yes. That door was off of the electrical control panel for the winches.

Q It led to an electrical control panel?

A Yes.

Q Can you tell me why it was lying on deck?

A Well, it was cut off, but I never saw it being cut off. It was removed.

Q Let me ask you this: In that electrical control room, to which this door led, was there any opening from that room to the cargo spaces?

A No.

Q So that even if that door had been completely open, water couldn't have gone into the cargo spaces?

A No.

MR. ALLEN: Mr. Keeler.

P A U L J. K E E L E R, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ALLEN:

Q What is your occupation, Mr. Keeler?

A I'm a marine consultant.

Q How long have you been in that business?

A Lacking three years, since 1954.

Q Can you give us a rundown of your background and experience that qualifies you as a marine consultant?

A Well, I started to sea as an ordinary seaman in 1933. I rose in grade to become a junior deck officer, a cadet deck officer.

At that time the steamship company had a contest amongst the fleet to bring a man ashore below the grade of second mate for executive training. I won that contest and I came ashore.

When I came ashore, I worked as a longshoreman, a winch driver, a hatch boss, an assistant stevedore, a stevedore, an assistant pier superintendent, a pier superintendent, and in 1963, I was made traveling stevedoring supervisor for the steamship company on the East Coast of Canada and the United States.

I resigned this position in April of 1945 to go with the John W. McGrath Corporation, which at that time was one of the largest stevedoring companies in the world, as marine superintendent in charge of their New York operations.

In October of 1953, I was elected vice president of operations of McGrath and their wholly owned subsidiary, Atlantic & Gulf.

I resigned this job in November of 1954 to go in the marine consulting business.

After seven years in that business and after an extensive survey of the American President Line, I went to San Francisco as vice president in charge of cargo and terminal operations worldwide.

I resigned this job three years later on December 31st to come back to New York and resume my marine consulting business.

In 1953, I was elected president of the National Association of all the sevedoring companies of the United States, and in that capacity I served two terms.

In 1954, I was elected to the National Maritime Transportation Conference at the National Academy of Science in Washington and I served on that board of advisors for two years.

independently arranged to hold the cargo in place?

A Well, that is a difficult question the way you put it for this reason: There are cases that do not have to be lashed, all they have to be is shored and chocked and they are finished.

There are wheel vehicles that neither the lashing is sufficient to hold them, nor is the chocking sufficient to hold them, so you use both of them.

But in each instance the type of cargo and the way it is stowed has a great bearing on whether you just use shoring and chocking or whether you use a combination of shoring or chocking or whether you just use lashing. Like when you are loading paper, there's many instances where you might just lash the paper and you won't shore it.

Q Let's get right down to a wheel vehicle and let's talk about a vehicle such as Exhibit 45 before it became damaged, a vehicle of approximately that size and shape.

What is the proper way to secure that vehicle on board ship?

A You would need both -- you would need both types of securing, you would need both the cradle and the chocking and then have the cradle secured to permanent ship members or something that would anchor the cradle. Then you would need your lashing after that.

Q Let's take it one at a time. Let's describe the cradle first. What is that?

A The cradle is a crib that is put around -- the vehicle is put on the ground. It's got four wheels. The cradle is built outside of the wheels and in front of the wheels by crossing heavy timbers and spiking them down or securing them some way.

Q If I could express that inexpertly, would that be roughly a square frame around the vehicle at deck level?

A Yes. That is called the cradle.

Q That is the cradle?

A Yes.

Q For a vehicle that you see there, what size timber should you use?

A Four-by-four is just a little light, although I have seen them used. The proper timber would be six-by-eight laid flat and on edge, whichever way you decided to best use it.

Q Then those pieces are nailed or spiked together to form that cradle?

A Yes.

Q All right.

Is anything else done with respect to carpentry work around the vehicle itself?

A Well, when a machine like this is loaded, it is on pneumatic tires and there is some springing device in it. Just exactly what this machine has, I don't know. I don't know whether it is a leaf device or whether it is just an articulation on the middle of the axles to, you know, make this machine less rigid over rough ground.

When you attempt to -- let's just take the carpentry. When you attempt to crib a machine like this, you know that as the vessel rises and falls on the crests and into the trough of seas, there is going to be some compression in the tires just like there would be in your own automobile. For that reason the -- there is no way to keep this machine quiet. It is absolutely impossible.

The machine will work all the time unless you make some very special tie-downs on it. Even then I have been in ships in very bad weather and we did everything that was manually possible to stop these pneumatic tire machines from moving and we couldn't do it.

Q I did not want to interrupt you, but I wanted to stay with the carpentry work.

A Yes.

Q What carpentry work should be done to prevent this bouncing up and down you are talking about?

A You can't prevent it by carpenter work, except

there's one way you can do it, and that is you jack the wheels up until they are not resting on the tires and shore off the ends of the axles and then you have really got the piece because if you jack them up and shore in there with heavy timbers, just block it up, then the machine is no longer on the tires where it can bounce, but it is held down on to these blocks.

Q It is sitting on wooden blocks on the axle?

A Yes.

Q Is that the proper way to do it?

A Yes.

Q What other carpentry work do you do, if any, to keep this vehicle with its framework from moving?

A You would put -- it is quite a detailed job, but it would entail putting radius pieces the shape of the wheel on the back of the rear wheels and on the front of the front wheels. You would put radius pieces high enough so that the axle that has the impetus of the weight would not make the tire attempt to crawl over the cribbing that you laid down around the wheels.

Q Approximately how high would that be on the vehicle in that picture before you?

A It would be ideal if it was up to the axle in height, from the deck up to the height of the axle.

bring it down to the cradle. It serves then two purposes:

It serves the cradle from moving in that direction and from lifting.

Q Looking at that machine before you again, would four-by-four be sufficient for shoring that machine?

A I wouldn't think so, no.

Q There is another part of the operation which is the lashing.

Will you tell us what is the proper way to lash a machine such as you see there?

A Any machine with wheels on it should have at least four lashings, front and rear. That would be two forward and two in the rear part of the machine. Both the lashings should be crossed from the right forward corner down onto the deck or something just ahead of the forward left corner.

The high left corner lashing would cross at 45 degrees or something like that and come down to a point ahead of the right wheel.

Those lashings serve two purposes: They keep the machine from moving, if you were in the driver's seat, from left to right, and they also meep it from going backward.

You put the same type of lashings on the after end of the machine and those lashings also keep, if you are in

driver's seat, keep the machine from going to the left or going to the right or keep the machine from coming forward. That is just four lashings.

In a heavy type of machine such as this, there should be two side lashings that would terminate on a strong part of the middle of the machine, some shaft or appurtenance that had a lot of strength to it. It would go slightly outboard of the machine and aft.

The other one would either start there or just a little astern of it and it would come forward on the side of the machine.

Now, if you bring them out from the machine, if they are on the left side of the machine, they keep the machine, if you are in the driver's seat, from going to the right. This one would keep the machine from moving forward. This one would keep the machine from going aft. The other two on the other side of the machine, which would make eight lashings, would serve the same purpose.

Now, then, from keeping the maching going ahead you would have two side lashings and you would have two stern lashings. The same in the front. From keeping the machine going astern, you would have two front lashings and two of the side lashings. From keeping it going to the left you would have a corner lashing forward, you would have

a corner lashing aft and you would have the two lashings on the right side of the machine, and to keep it from going to the right, you would have the same lashings on the left.

Q All right.

When you are leading these lashings from the machine to the ship's structure, does it make any difference how high up the lashing is secured to the ship?

A No. Any lashing that led above this machine was useless. It was serving no purpose at all.

Q Is it correct, then, that the proper way to lash is to bring the line down as low to the deck as possible?

A As quickly and as low as possible, yes, as quickly. By that I mean as near to the machine as possible and as close to the deck as possible.

Q There's been some testimony in this case that these tractors were stowed end to end athwartship.

If they had been secured in that position, is that one in which they could have been properly secured for a voyage at sea?

A Machines like this stowed athwartship should have had very special care. They should have had the ultimate in lashings.

MR. MC HUGH: I move to strike the answer as nonresponsive.

Mr. Costa, at page 13, says there is a piece of wood like this, indicating more or less like a chock.

MR. ALLEN: I think I researched this question properly.

MR. McHUGH: My objection is essentially this, your Honor: it doesn't tell the number of timbers or how high they were placed. It doesn't say or state to the witness the number of lashings that were used, to what points on the machines they were affixed, to what terminal points on the vessel they were affixed.

It does not describe the manner in which the cradle around the wheels of the machines were braced or shored off. In short, the question is grossly incomplete.

MR. ALLEN: A lot of that is not correct, because he says, for instance, it does not show where the wires were affixed to the ship. It certainly does. If it will help, I will just add where the wires lead, as shown in Exhibit 14.

We have had testimony this morning about the various equipment that is used. The boatswain shows where he has found it.

THE COURT: You offer in evidence at this point the questions and the answers to interrogatories of United Terminals, propounded to New Jersey Export?

MR. ALLEN: Yes.

THE COURT: Those will be received in evidence.

With that foundation, I will overrule the objection to the hypothetical, and if there are matters Mr. McHugh contends should be included in the question, he can deal with those on cross-examination, and that will go to the value that I place upon the answer.

They will be deemed marked in evidence at this point, and they have been identified by me on the record.

Now, read the whole question from your sheet of paper, together with calling Mr. Keeler's attention to Exhibit 14.

Q Mr. Keeler, will you assume that two earth-moving tractors, weighing about fifteen tons each, mounted on large, air-filled rubber tires, each tractor measuring approximately eighteen feet, six inches by twelve feet, with buckets removed, were stowed athwartship, end to end, in the forward part of Number 2 'tweendeck, that each wheel was chocked with a triangular shaped wood block, and the tractors were boxed in with four-by-six timbers and braced and shored off to the skin of the ship with four-by-four timbers; that five-eighths wire lashings and one by eighteen inch welded nut turnbuckles were used to secure the units to each other and to securing rings located about five feet above deck level on the ribs at

wheels should be resting on the side timbers?

A On the side timbers.

Q What about the five-eighths inch wire?

A It is not heavy enough for a machine like this, by any means.

Q The two units lashed together -- I said fifteen tons each -- the two together would be thirty tons.

A Yes.

Q What about these welded turnbuckles?

A Welded nut turnbuckles are undependable. In World War II, I was banned by the Maritime Commission from ever using welded nut turnbuckles on tanks, weapon carriers, recoilless rifles, tank trucks, and we had a definite limitation on welded nut buckles, which we had to use in the war because we couldn't get forged buckles to the number that we needed. But we were banned, directly banned, from using welded nut buckles on all those pieces that I just mentioned to you.

Q Is that because the weld sometimes fails?

A Yes.

Q What size turnbuckles should have been used on a size load like this?

A The buckle depends on the wire. There is no use using a great, big, heavy buckle if you are using a wire that

Q Have you done it?

A No, but I have been there. I have been in there looking at it.

Q You have been in the Amazonia?

A No, but I have been in ships in bad weather.

Q When were you last in a ship, sir?

A In my United Fruit Company days.

Q How many years ago is that?

A Back to 1936.

Q Did you carry tractors that weighed 15 tons in those days?

A We carried them that weighed 50 tons and 100 tons.

Q What did you secure them with?

A We secured them with everything but anchor chain, we welded pad eyes onto the deck, we welded angle irons onto the deck, we put them on 14, 14-inch cradles. We were lucky to get some of them to the destination.

Q When you were shipmates with these tractors that you have just described, did you go and inspect them from time to time?

A Yes. If the weather required it, yes, we did.

Q If the weather was --

A If the weather required an inspection, we did, yes.

Q What did you do on this inspection?

gwrm

A We walked around them, we felt the wires, the tension on the wires.

Q Did you do anything with the turnbuckles when you made your survey?

A If we found a loose one, yes, we made it up.

Q We had a witness yesterday, a Mr. Ganly. I'm sure you know him by reputation if not personally. He testified that all wire -- somebody used the word "stretch" to him. He said, no, it does not stretch, it elongates once it gets out in the sea and the vessel begins to work.

Has that been your experience?

A No.

Q Wire does not stretch as far as you are concerned?

A Yes, but I never saw it grow.

Q Is it a fair statement that when a vessel gets out in a seaway and she pitches and she rolls and she heaves and various forces are brought to bear on the wire, that it does elongate, become longer? Is that a fair statement?

A No.

Q You do not agree with that?

A Unless it exceeds the elastic limit of the wire.

Q What is the purpose of the turnbuckle in this securing system that you --

A There is no way -- with the rope, if you have your

Q What does a roll of that newsprint weigh?

A About 1286.

Q 1286 pounds?

A Yes.

Q Assuming that the cargo was stowed, as I have asked you to assume, with the newsprint going all across the vessel and forward of the newsprint tractors end to end on the burton were located and forward of that are containers and rubber and cartons, and assume that newsprint stow broke loose and the rolls came down, would you conceive it to be possible that the rolls striking any one of these lashings could part the wire or damage the integrity of the stow?

A Not if the tractors were lashed properly.

Q I see.

Suppose the tractors had bracing and shoring, is it conceivable that a 1200 or nearly 1300 roll coming down off the top of a stow could damage that bracing?

MR. ALLEN: I object to that question. There is no evidence that their's 1200 rolls of paper up above.

THE COURT: He is talking about pounds.

MR. ALLEN: Pounds, excuse me.

A Yes, it could.

Q If that happened is it possible that the cribbing could be allowed to draft slackening possibly some of the

lashings?

A If the lashings were holding it, it would be hard to make the crib move. I suppose you could say that it could make some slack in the crib.

EMANUEL SILKISS, called as a witness by the plaintiff, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ALLEN:

Q Mr. Silkiss, what is your occupation?

A Metallurgical engineer - consultant.

Q What company?

A Lucius, Pitkin, Inc.

Q How long have you been in that field?

A In metallurgy, since graduation from the University in 1950.

Q May we have your professional degrees for the record, please?

A Yes. Bachelor of Science in metallurgical engineering acquired in 1949. Bachler of science in chemical engineering 1949. Bachelor -- no, I'm sorry, master of science in metallurgical engineering 1950. All from the University of Michigan.

Also, I have tkaen some post graduate work at New York University. I don't remember the years. I think it was '53 -- no, I'm sorry, 1956 to 1959. I taught metallurgical theory fracture and flow of metals at Polytechnic Institute of Brooklyn in the evening

Q Now, Mr. Silkiss, I wonder if you would go through the list of pieces piece by piece. Tell us what it was, what if anything you did to it, and what you concluded from any tests that you performed.

Can you do that?

A Yes.

There were two broken wire rope loops, lashing loops, and several pieces of turnbuckles. The pieces of turnbuckles consisted of two screws with Us and shackle pins at each end, a -- I'm sorry, three pieces like that, one of which had a nut from the turnbuckle body. The fourth piece was a distorted turnbuckle body.

We photographed all the pieces and photographed in close-up the breaks in the wire rope loops.

Q Did you come to any conclusion from your inspection or testing of those wires?

A Before we came to any conclusions, we also did mechanical testing of the wire rope itself.

Q Tell us what you did, and give us the whole story.

A We made some observations of the way the loop was fastened by clamps at the ends of the loops. We made some observations of the distortion and impressions of wire rope about the pins on the turnbuckles. Then we proceeded

to make mechanical test of what appeared to be a relatively sound portion of the loops, one of the ropes from the loops.

We determined that the rope was of sound quality and it exceeded the minimum tensile strength requirement for improved plow steel of the five-eight inch diameter, 6 x 18 grade, of which the rope appeared to be fabricated.

We also checked the composition of the rope and found it to be within the normal acceptable range for improved plow steel.

On one of the turnbuckles the nut, the way the turnbuckle was fabricated by two steel bars with a nut welded on each end, through which the turnbuckle screws are engaged, one of these turnbuckle screws had a nut on it which had been broken at its weld from the turnbuckle body.

We made a calculation based on the size of the weld and its hardness and estimated load carrying capacity of the turnbuckle. That was determined to be a load carrying capacity of 22,200 pounds. This compared with the load carrying capacity of a single part of the rope that was used in the lashing loop of 36,300 pounds.

Therefore, the turnbuckle was weaker by

calculation --

MR. MC HUGH: I might have missed some of his answer. Could I have his answer read back so I can pick it up?

(Record read.)

A -- than the wire rope itself.

We also found that the loop had in one instance parted at the clip and in another instance parted at a sharp bend at one end of the loop where there is a stress concentration. This impairs the load carrying capacity of the rope by whenever it is passed around a relatively sharp bend as was brought out by the counsel, Mr. McHugh, during cross examination of Mr. Keeler.

I have photographs showing the stress conentrations.

We also found that the evidence of the excessive loads was the brinneling or impression of the wire rope in one of the turnbuckle pins, and there is also the bending and distortion of another turnbuckle pin due to excessive loading.

This is some of the testimony.

Q Then you did find evidence of excessive loading on various parts of this system?

A Yes.

THE COURT: If you got a fifteen-ton tractor, as to which the lashing lines are taut, can you tell me with any degree of accuracy that makes it more than a guess as to what kind of pressure is being transmitted through these wires as a vessel will roll?

THE WITNESS: No; I couldn't tell you. May I add something to that, though?

THE COURT: Surely.

THE WITNESS: The wires, in my opinion, have to be pre-stressed, pre-tensioned, so that you don't get any slack under the working of the load. That is, because of the elasticity that is holding down, holding the load in place, the elasticity in the wire rope, you have to have enough pre-tension to exceed the loads that would occur in the voyage, through the voyage. Otherwise, the rope would go slack, and you could get, apparently, this slap the attorney was referring to.

THE COURT: We have had some testimony here that one of the tasks incumbent upon the ship's crew was to go down and tighten the turnbuckles from time to time to take out this slack. There has been a dispute. Some people say there is no slack; some people say there will automatically

be slack or slap or whatever you want to call it.

THE WITNESS: This is something like in the guy wires of an antenna, holding it in the wind. You have to properly pre-tension. You don't take a chance it's going to get slack. You may get slack, but you don't take a chance. It should be all properly fastened down in the first instance, anticipating against getting a slack condition.

THE COURT: Let me give you two questions. Maybe you can't answer them.

If you have two lashing wires holding a fifteen-ton tractor that's on the floor of the 'tweendecks, if you had that attached to the starboard side and it's taut, would you have any estimate as to, if there is a roll to the port which would tend to cast the tractor off to port, what kind of tensions one can expect upon a wire that's already taut? What is it expected to take up at that point?

THE WITNESS: I couldn't estimate.

THE COURT: Two, three, four tons? What is the pressure you are exerting by that roll?

THE WITNESS: It would depend upon the load, the fifteen tons, the friction, whether the brakes are one. All sorts of possibilities. In other words, the tractor itself may stay still without any lashing under certain roll conditions.

THE COURT: Is it likely to exceed the twenty or twenty-five per cent of the load limit of the lashing?

THE WITNESS: I would say it's outside the realm of my experience. I could speculate on it, but I wouldn't have any experience on it.

THE COURT: On the other hand, if the rope were to grow or stretch, as you have heard, that would build up -- that would allow some little distance in which fifteen tons could get up a little impetus and come up with a snap at the end?

THE WITNESS: If it got slack. If you took -- if you take a looping system like that, and the more loops you have the more opportunity there is for slack to develop.

THE COURT: Then you do have the principle that slack can develop, the more loops the more chance, but even with a single strand, slack could develop?

THE WITNESS: But then you have to overcome the pre-load, the pre-tension.

THE COURT: By taking up the turnbuckle?

THE WITNESS: Initially. Such that the load from the moving of the ship can't relax the load on one side. You increase the load -- here's the load and held taut in the middle. So if the load tends to move to one side, it's going to relax it to one side, and the other side is going to get under a higher tension.

But if you still have a pre-tension in that -- that is, on the one side that is tending to relax, if you have a pre-tension that is greater than the relaxation that would occur, the rope will still be under residual tension.

THE COURT: And if you have this slack developing, that could cause a situation where with a certain amount of slack you can develop a situation permitting loads to be put on this wire that were not intended to be put on it; is that right?

THE WITNESS: Yes; but in order for the slack to develop, the tractor has to move.

THE COURT: I am --

THE WITNESS: It must move.

THE COURT: I am assuming that the earlier witness is correct -- maybe he is or is not -- that this rope is going to grow. Then this is going to happen as a matter of course. As this vessel gets down off Cape Hatteras, and it's going forty-five degrees across the seas and it's rolling and it's pitching, this rope is going to grow, and as this rope grows, the opportunity increases for impact to be put on it as you reach the end of one roll and you swing into aother; is that right?

THE WITNESS: The rope goes slack.

THE COURT: Thank you very much.

(To the witness:) Go ahead.

Q Do you have the question in mind?

A I say if the tractor now becomes free to move, then you are into dynamic strengths. If the rope is holding it tight, it can't move.

MR. McHUGH: Thank you, Mr. Silkiss. I have no further questions, your Honor.

REDIRECT EXAMINATION

BY MR. ALLEN:

Q Just a couple of questions.

You testified that you were given a group of sample by Mr. Ganley. Did he give them all to you?

A We opened the crate as it came in.

Q Did you test and examine every single piece?

A I looked at every piece, yes.

Q You didn't set some aside that you thought would not accomplish some particular purpose? You examined the whole group, didn't you?

A Yes.

Q There was some talk about when you pull on a wire rope it grows or extends a little. Is it true that the shorter the length the less it will pull or grow, with the same force being applied?

A That's true.

Q In other words, it is a factor of length. And is it also true, as you so aptly described with your illustration of an antenna, that if a wire is properly pre-tensioned, which I think was your word, that additional strain will not cause any appreciable growth?

A No; it won't. Only if you exceed the pre-tensile loads will it be able -- will the antenna be able to move. Only then will the guys slack.

Q But you can make these tight enough if you have a turnbuckle in so there is no room for that to occur, can't you, when you install the antenna?

A That's the object of the turnbuckles.

Q It is possible to do it, isn't it?

A Yes.

MR. ALLEN: That's all.

RECROSS-EXAMINATION

BY MR. McHUGH:

Q You are not by any chance a sailor, are you?

A No.

Q Are you familiar with the rig of a sailing sloop?

A A little bit.

Q You've got a mast, and you have shrouds holding it to either side?

A Yes.

THE COURT: And you are guaranteed more certainty in this if you have a lighter fuel?

THE WITNESS: Yes, sir.

THE COURT: I see. I understand now.

Thank you very much.

Q Based on your experience as a marine engineer and a marine surveyor, and having in mind the damage to the shell plating which you saw in repaired condition at Bermuda on the Amazonia, would you say that a considerable pounding would have had to have occurred before that shell plating had been punctured?

A I certainly would.

Q In your experience, would this have been heard by the crew of the vessel?

A It would have been audible in the engine room immediately.

MR. MC HUGH: I am going to ffer, with your permission, Mr. Allen, some additional documents given by you of the Amazonia.

MR. ALLEN: Were they numbered?

MR.MC HUGH: No.

MR. ALLEN: Why not?

MR. MC HUGH: I don't know why.

MR. ALLEN: Here we go again. He said I gave

A There was.

Q Thank you.

Then you made reference to the fact that on the 20th they shifted over to diesel fuel?

A Yes, sir.

Q Isn't that standard practice for a ship that is about to enter port, a diesel ship?

A To enter port, yes.

Q Yes. In other words, when you know you are going to enter port you shift over to diesel because it is in the channels and in the restricted passageways that you may need more maneuverability, right?

A That is right, after the pilot station.

Q Let me ask one further question.

The engines still run on diesel, don't they?

A Yes, sir.

Q All right.

Then I think you said that if these two tractors had been loose and pounding about, it would have been heard in the engine room?

A Very definitely.

Q Very definitely.

Why do you say that?

A Because if you get metal striking metal on the side

of a ship, particularly close to the water level area, it sounds like a cannon in the engine room.

Q Hearing that sound wouldn't necessarily tell you what was causing it or even where it came from, would it?

A It would tell the engineer the sound comes from up forward and there is something very far wrong.

Q But that is as much as he could know at that time, just there were sounds that should not be making sounds?

A That is exactly what he would know.

Q Did you take into consideration the fact that the engine room in this ship was separated from No. 2 by one entire hatch, No. 3?

A It could be separated by six hatches and you would still hear the knock.

Q All right.

Let's take a look at 94. That shows the holds with the pillows in them and a couple of bent ribs, right?

A These are frames.

Q Frames, excuse me.

A Yes, sir.

Q Frames, all right.

Was it your testimony that this indicated that this pounding had been going on for some time?

A Certainly; yes, sir.

with vessel on voyage to Bermuda upon arrival. Vessel with speed reduced to slow ahead, main engine burning diesel oil and operating normally. Auxiliaries 1 and 2 in parallel," so forth and so on. That is the only entry that I can find about actually anchoring, which was at what time? She was sailing pilot courses at 1310 on the 21st.

Could I ask Mrs. Baker to peruse this a little more carefully?

THE COURT: Yes.

A L P H O N S E D ' A M B R O S I O , called as a witness, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MC HUGH:

Q Mr. D'Ambrosio, by whom are you employed?

A City.

Q City of New York?

A Yes, sir.

Q In what capacity?

A I'm a ship's carpenter for Marine and Aviation.

Q How long have you been employed by the City?

A Three or four years.

Q Prior to that by whom were you employed?

A New Jersey Export Marine Carpenters.

Q For how long were you employed by New Jersey Export Marine Carpenters?

A About eight years.

Q What was your job with New Jersey Export?

A I was a ship's carpenter and foreman.

Q Had you had carpentry experience before joining New Jersey Export?

A Yes, sir.

Q Can you tell the Court what that experience was?

A I worked for Turner and Blanchard since 1946.

Q What business was Turner and Blanchard in?

A They were in the stevedoring business.

Q Your job with Turner and Blanchard was what?

A I was a carpenter, maintenance foreman.for the last fifteen years I worked there.

Q Had you any carpentry experience before going with Turner and Blanchard?

A Yes, I went to school. I graduated high school.

Q What is that?

A I graduated high school.

Q After graduating from high school you went to Turner and Blanchard?

A I worked in the lumberyard a few months, war broke out, went into the service, came out and went with Turner and

maintenance man. You are allowed to go on the ship, on the pier, on the dock, in an office, you can work.

Q I see.

After you became employed by New Jersey Export did you do marine carpentry exlusively?

A Yes, sir.

Q Do you recall working aboard a vessel called the Amazonia in January of 1971?

A Yes.

Q Were you then employed by New Jersey Export?

A Yes.

Q What capacity did you serve that vessel?

A I was the foreman, carpenter foreman.

Q How many men did you have under you?

A Onthis particular ship?

Q Yes.

A I had sixteen men. That is eight carpenters and eight lashers.

Q Do you recall the day or date when you began work on Amazonia in January of '71?

A January the 14th, 15th, 16th and 18th.

Q You were actually aboard the vessel each of those days?

A Every day except Sunday.

Q Sunday was the 17th, I gather?

A Yes.

Q Do you recall having performed any work in the No. 2 tween deck of the Amazonia during that period of time?

A Yes, sir.

Q Mr. D'Ambrosio, suppose you describe in your own words what you did in the No. 2 tween deck of Amazonia during that period of time and in as much detail as you can recall for the Court, please.

A We had two tractors that come in the top tween deck. We chocked and we lashed them the best we could.

Q First of all, do you recall the tractors being put aboard the ship by the stevedores?

A Yes.

Q Do you recall approximately what time of the day it was?

A It was late in the afternoon.

Q This would be on what date?

A The 18th.

Q That would be Monday?

A Yes.

Q Incidentally, did the ship sail that same day?

A Sailed that night, 9 o'clock.

Q Did the gang that you headed of carpenters and

lashers work overtime that day?

A Yes, we worked until 9 o'clock.

Q From what hour in the morning?

A From 8 o'clock to 9.

Q In the afternoon when the stevedores placed the tractors that you referred to aboard the ship, can you describe for us where in the ship they were placed and how they were placed? I mean positioned.

A They were placed forward on the starboard side, burton, end to end.

Q You say end to end?

A Yes.

Q Were they placed on the steel deck or was anything put under them?

A They had dunnage under them. They usually put dunnage under them. They had dunnage. The first one went under the coaming toward the skin of the ship.

Q On what side?

A On the starboard side. The second one was put in back of it facing starboard side.

Q When you say "facing," you mean the direction in which the machine would proceed if a driver was sitting on top of it?

A Right.

Q You are referring to that as the front end of the machine?

A The front end.

Q So that the one on the starboard side was facing the starboard and the one behind that was facing the port?

A Yes.

Q They were both athwartship or burton, as you say?

A Burton.

Q Was there at the time these tractors were landed other cargo in that hold?

A There was cargo across the hatch and cargo under the coaming tween deck, port side, and they had cargo forward under the coaming.

Q Let's take what cargo, if any, was forward of the place where these tractors were landed?

A We had two containers, one port side and one starboard. They were running burton.

Q They were on the burton?

A Yes.

Q Were they immediately adjacent to the forward bulkhead of the No. 2 tween deck space? In other words, up against the bulkhead?

A Yes.

Q One you say on the starboard side and one on the port side?

A Yes.

Q Was there any centerline divider in the No. 2 tween deck in this area, if you recall?

A Yes.

Q How far back from the forward bulkhead did that centerline divider extend?

A Up to the coaming.

Q Now, the coaming sometimes is referred to as the hatch opening?

A Yes.

Q Both at the weather deck level and also to enter the lower hold from the tween deck, right?

A Yes, sir.

Q What cargo was aft of the location where these tractors were loaded, if any?

A Well, you had reels of paper aft, and that went into the wing on the port side with general cargo.

Q Was this paper that you referred to as being aft of the tractors stowed all across the ship from port to starboard?

A It went all across, and when it got to starboard there was a case in front of it, so she went around the case.

Q Then I gather that there was a case immediately aft of the place where the tractors were landed on the starboard side?

A Right.

Q And behind that there were rolls of paper, you say?

A Paper.

Q Extending all across the vessel?

A Yes. In the middle of the case, too. It come a little beyond the case and go across the hatch.

Q What did you do with these tractors, if anything, you and your men?

A We chocked them and we lashed them.

Q Can you tell the Court what that consisted of?

A Well, we crib it, and we block it, and we put legs and braces and shores. That's the carpentry work.

Q Mr. D'Ambrosio, at my request did you undertake to make a model of the manner in which you chocked and

lashed this cargo on January 18th?

A Yes, sir.

Q Did you bring it to court with you today?

A Yes, sir.

MR. MC HUGH: May I bring it forward, please.

THECOURT: Yes.

(Pause.)

Q The first question I would like to ask you about the model which is before you is whether you made it to scale.

A Yes, I have it to scale, maybe a little off. Maybe very slight. But before you go on I would like to explain something to you.

Q Certainly.

A This is the coaming. There was another container here. This cargo was here. You have cargo like this here. And you had a case here. The case would be twice as big as that one. It was right here. Then you had a fence across here. Now, I extended these longer to show you what they look like.

Q In other words, to make a better detail?

A The scale would be about there (indicating), but you couldn't get the idea of the brace so I extended it. So the cargo would be on this side roughly about two,

three foot. On this side it was three to four foot. And then there was a case here.

Q So the record is plain, what you are saying is that there was a distance of how much between the after end of the container on the starboard side and the forward end of the starboard tractor?

A Roughly four foot.

Q And the same distance between the cargo --

A Container.

Q --container here and the tractor?

A Right.

Q On the after side of those two tractors, how far was it before other cargo came?

A Well, over here it was about three foot. And over here it was about a foot. There's a case here.

Q What was the cargo other than the case extending across the after end of the tractor?

A Rolls of paper two high.

Q Was there any securing on the forward edge of that stow of paper?

A They had a fence here.

Q Was that fence constructed by your men?

A No. They come up that way.

Q It came up from another port that way, you say?

A Yes.

Q You have in this model, Mr. D'Ambrosio, placed various pieces of wood. Can you tell his Honor what each of them represents, and whether they represent what you actually did.

A This is actually what we done.

Q On the stowing of the tractors in question?

A Absolutely.

Q Would you begin with the first tractor you worked on?

A This is the first one, the first tractor.

Q That would be the one on the starboard side.

A She comes in here, and they drag it inside here and she goes in. The first thing we do is we got a wedge block here, we put a block under each one.

Q Under each one?

A Under each wheel there is a wedge so she don't go back out in the event the ship should move.

Q During loading?

A Then we put a block here. Under here and here we shove a timber there just to hold it.

Q Here and here means where, the front wheels?

A Yes.

Q Okay.

A Do you see this blade? These forks are closer. This is close here. On this model it is different. That holds the bucket, but the buket is not there. So these aren't hydraulic, so we lift it up and we put a block here and here. That's the first thing we do. You wedge here and here.

You've got two wedges. Then you put a stringer. That's a long piece from here to here. That's a stringer.

Q What size lumber is that stringer?

A All this is four by six we used on these tractors. This is a stringer.

Q That stringer extends from --

A Wheel to wheel beyond. And it could be two foot, one foot, as long as it is beyond here. You put two, one on each side. Then you get crosspieces. You put two there and two there. One the rear of the forward wheel, the middle wheel there, and the end.

After you do that you put a block in between here to hold these two from spreading on both sides. These are all spiked down now with 60 penny nails. We use 20 pennies to toe nail, tack them. Tack them means just to hold it. Then you drive two sixties in each one of

these.

This is a chock here. Then you have one there. It's really a brace.

Now we go back to the first. You run a four by six across the ribs here.

Q Across the ribs of the starboard side, you are referring to now, right?

A Yes. We lift this up and put two blocks under the blade. We call them blades. It's an arm that holds the bucket. Then you put a block under here to keep this up high so that you can slide this here crosspiece across. Otherwise, you can't get it through.

Then it rests on that four by six, and she is hitting this four by six. Then you shore it. You chock it from here to this here. And the same thing on that other side.

Q You chock it from where to where?

A You chock it from the front wheel crosspiece to hit the brace on the ribs.

Now then you chock that, naturally.

Q Do you have any other blocking?

A We made a cradle. There's a cradle under this here, the rear end, and the top piece you put in is a four by six. They are all four by six. The top piece is a

four by six cut as a wedge, and you drive that in, and that picks up -- it don't pick it up; it just makes it tight.

Q It picks up the machine, you mean?

A Yes.

Q To take the weight off what?

A To take the weight off the wheels.

Sometimes a wheel gets a flat. That's the reason why we do that. You put those blocks any which way as long as you build them up to the chock. Do you know why? Because it's not even underneath; it sort of turns around.

Q You mean the axle?

A Yes, the axle. So you drive a wedge, and that just shapes right in, and that will lift the weight off the wheels.

Q Does that conclude your description?

A No. That's the first one. When you put the second one in you do the same thing, but you put a chock from this tractor to this tractor. It hits this brace. This crosspiece and this crosspiece.

Now, you've got cargo here. That's this here with a fence. Here's your cargo. This is your fence. On the fence you put a leg. The leg goes up to the top of the

coaming. You've got ribs coming across, and that holds that leg. You brace that into the fence.

You either do it this way, if you have a chance to put the legs up for the tractor; if you don't, you put this against the fence. We like to put legs up. If you can't do that, you run a four by six up here, or four by four. That's the only place you use a four by four. And then you shore it this way.

Do you see the way it is? First, you've got to put a filler piece. There's a hub on the wheel that sticks out, so you put a filler piece here and this is a leg that gets the bottom of this stringer to the top of that filler piece, hits the tire. Then you put a brace on the bottom. And you put one on top. This is a wedge shape and you drive it in. This is a leg, or it's an upright. This continues and goes so high.

THE COURT: It goes up all the way under the deck?

THE WITNESS: About like this. If you can go under the deck. In this particular case it can't go under the deck; we're in the square of the hatch. Here's the square of the hatch. I can't put a leg up here, so I go against the cargo.

There'a fence here. You put a four by four, or

four by six. That's the only time you use a four by four, against a fence. Nothing smaller than a four by four for a leg. Then you shore into that.

When you are finished shoring all that you have to tie this in with dunnage. These are all legs. You see they ar all ed in.

Q The smaller sticks in this model represent, you say, dunnage?

A Yes.

Q What is the dimension of a piece of dunnage, generally?

A You can get one inch, one inch and a half, by six or four or twelve. You know, up to twelve.

Q In other words, they are boards?

A Yes, they are boards.

Q And they are used for what?

A We tie them -- you use them for fences, and this is dunnage underneath each tracttor. You have to have it under the rubber tire. That's what they always put. And when we put our first stringer we tack it to the dunnage just to keep it there while you are getting these pieces in. And this ties in all our legs and braces and chocks. In the event --

Q You mean the dunnage bracing that you are

referring to?

A Yes. In the event anything happens where this leg falls there is nothing to prevent it from falling. Do you know what I mean? So this holds it. And all of these are tied in, if you notice.

This is just against the cargo. We brace everything.

Q On the Amazonia, you are talking about the bracing on the after side of the tractors. You say that's against the cargo?

A Yes.

Q What kind of cargo here?

A Reels of paper. And there was a case here. This here brace went into the case. This is the only brace that went into the case.

Q And the brace that you are referring to is on the after starboard side of the tractor?

A Yes. That's the forward end. This is the starboard.

Now, here's te way you put the brace if you can't put it any higher. In the event your cargo was solid like your reels of paper you put it this way. You've got a block here and a block here. That's to hold that from going down when you nail it.

THE COURT: You are saying that these after, these are braces?

THE WITNESS: Yes.

THE COURT: These after braces are up against the fence?

THE WITNESS: Right.

THE COURT: And that fence is up against a cargo of rolls of paper?

THE WITNESS: Yes. That's solid.

THE COURT: How do you mean it is solid?

THE WITNESS: Solid cargo. This is general cargo so you've got to go down. This goes down. Always try to go down to the floor. In the event you can't go up this high into solid cargo.

THE COURT: What you mean is no matter what the force is used here, up to a point, obviously, this would not push aft because cargo would resist it; is that it?

THE WITNESS: Right.

THE COURT: Okay.

THE WITNESS: That's the carpentry work.

Q That's your description of what you did?

A That's what we did.

Q Let me get it clear. First, do you actually remember performing this job?

A Absolutely.

Q And do you tell us that the model depicts the actual way in which it was done?

A Yes. It might be over a little.

Q Except for scale.

A Right. This is the way it was done. This could be in further; this could be over a little further.

Q You say that concludes your description of the carpentry work?

A Yes.

Q What else was done?

A Then we lashed. We also do the lashing. We have lashers that do our work. They work for us, too, do you know what I mean? We help, too. If the carpentry work is finished and there's nothing to do we give them a hand with the wire, turnbuckles, and all, because that's a lot of work.

This may be over here or here, I don't remember. This might be a little further. This may be in. But it's maybe a foot or two off or on.

Q What you are referring to now is that the wires you have affixed to the machine and to various portions of the vessel show the way it was done, except that it may be a foot off one way or the other

laterally?

A Right.

Q What else?

A In other words, it might be here or here. But that's it. That's only up here.

Q Let me take the lashings on the front end of the tractor placed on the starboard side. What lashings does your model descirbe?

A You've got a lashing on each side of the axle here.

Q Extending to where?

A That goes into weepholes on the bottom of the rib. There's weepholes there.

Q At deck level; right?

A Yes.

Q One on each side?

A Yes. And we cross them. If you notice, all wires are crossed.

Q What besdies the two extending to the weepholes in the ribs?

A There are two rings. This ring we hooked in straight ahead. We pull it forward. This was a good ring. I remember that distinctly. This is a padeye. That's a ring on another ring that swivels.

This is an eyering, rather. This is a padeye.

That's one sold piece welded on. We put it this way. That pulls forward.

You've got to put at least eight wires on the tractor -- at least. We've got four on the front, and we've got one there that goes there.

Q What did you do on the after end of the starboard tractor as far as lashings go?

A There was only one place to hook up that had a ring bolt and that was --

Q The centerline bulkhead?

A Yes. So we put it in there. There are four ring bolts in there, so we put one in ther. Then there was no place else to put it.

Now, this is the coaming. We call this the coaming. Under the coaming you have brackets with weepholes. You also have holes here, but we don't like to use it here.

There we put a wire underneath this coaming and that goes into this.

Incidentally, these shackles I made ahook on them because I couldn't make it with the bolt, but we use bolt shackles.

That was hooked to the coaming. It might be further out, but it was in further because w e had cargo

here and we just cleared the cargo not to touch the paper. You try not to touch the cargo with the wire.

That's this tractor.

Q You are talking about the back end or engine end of the tractor placed on the starboard side. How many wires did you have securing the engine end of that starboard tractor?

A On this one in particular we had three. One into the skin, one into the coaming, and one into the centerline. That's on that tractor.

Q What aboutthis?

A This went up to the coaming.

Q Were there any other wires on the engine end of that starboard side tractor?

Don't hook it, because we may want to take the so-called false deck off.

A That's the way that was hooked up. When this came in --

Q You are now talking of the second tractor?

A Yes. She faced port side. The blades were port side. We chocked it the same way. When we married them. We married them this to this one, and that to that one.

Q By what means?

A With lashing wire.

Q Crossed?

A Yes. We crossed them.

Q Attached to --

A The axle here and the axle here.

Q The axle of one machine to the other?

A You. You give it a turn around.

Q What else did you do to the tractor in the square of the hatch, the second one loaded?

A We put a wire from the machine end -- there were four ringlets here, two in the front and two in the side. We used this one here. The other side we didn't use. This was lashed to the centerline. This was lashed to the coaming because it was closer here than here or here, so we went here.

We are pulling everything forward. Then we went in the back and this here went into the skin or the coaming -- yes, it went into this here coaming. I only tied it to the skin because this coaming comes around.

Can you picture it?

THE COURT: Yes.

A This one went into the coaming on top, and this went into the coaming on top.

Q In cross fashion?

A Right.

The reason why I went to the coaming and not the skin, the cargo was here, and there was some reels of paper and general cargo.

Q Some cargo was placed then to the port side of the second tractor loaded?

A Right.

Q Which prohibited what, your lashing to the skin of the ship?

A The skin. And if there was any padeyes to the skin. You have to go look for padeyes. Whatever padeyes that are available, you could use. If there's no padeyes then you've got to go to the coaming. There is no other place. This is to the coaming. And this is also chocked to the cargo.

Do you see this here?

THE COURT: Yes.

A It is all checked. This went to the coaming up here. The coaming come across like this.

Q Am I correct in concluding that every lashing on your model to which is affixed a blue tag is a lashing that goes to a coaming?

A Yes.

Q Could you tell us what wire size you used in

this operation?

A Five-eighths wire.

Q Do you know the number of strands in the wire?

A 6 over 19.

Q Can you describe, please -- take one of the lashings on your model and describe how it is assembled.

A Well, if we go through a ring we weave it through twice. If we go through a weephole you weave it through twice. That's double. We never use single. It's never single.

Q To make a loop?

A To loop or even to lash from a turnbuckle.

Q If you are running a lashing, let us say, from the tractor over to a padeye on the ribs of the vessel or framing of the vessel, would you make two wire loops first?

A You make one. You put the turnbuckle in, and then you make the other one from that end of the turnbuckle to the skin or to the eye.

Q So that there would be aloop affixed to a portion of the tractor, a fixture on the tractor, at the other end of that same loop affixed to a turnbuckle, and then to the opposite end of the turnbuckle there would be another loop which would be passed through the padeye; right?

A Yes, that's correct.

Q Is that the way it was done on the Amazonia on this occasion?

A Yes.

Q I wonder, could you go to the blackboard and underneat the diagrm already there, where there is enough space, draw the way you make a loop, and then indicate on the diagram the manner in which you would catch your turnbuckles and your clips to form a loop.

(Witness demonstrated.

Q You have drawn a --

A A loop.

Q A loop; is that correct?

A Yes.

Q How do you affix the loop?

A (Indicating)

Q Two clips? Are those lines to indicate clips?

A Yes. These are clips.

Q What direction do you put the U part and the saddle part of the clips?

A The U part is always where the dead end is, and then you've got the two nuts here.

Q And on the other one?

A (Indicating.)

Q Where do you affix your turnbuckle.

A The turnbuckle comes in here. That's the turnbuckle.

Q In other words, the turnbuckle is affixed --

A We ususally put a clip on each side of the turnbuckle.

Q Between the two clips?

A Yes.

Q Is that the system followed on the Amazonia in the lashing of these tractors?

A That's the way we always do it.

MR. MC HUGH: Will you return now to the stand, please.

(Witness resumed the stand.)

Q To return once again to the model for a brief period of time, the removable portion on the top is to represent the weather deck and the hatch coaming entering the tween; right?

A Yes.

Q Did anybody inspect your work after you had completed?

A What's that?

Q Did anybody inspect your work after it was completed? When I say "work," I mean the lashing of these

tractors.

A Oh, yes.

Q Who?

A On the ship?

Q On the ship, yes.

A The mate. The mate always comes down on every ship and he okays it before we can leave.

Q Did that happen on this occasion?

A Yes, sir.

Q Were you there?

A Yes, sir.

Q Did you have a conversation with the mate?

A Yes.

Q Did the mate speak English?

A Broken English. He didn't understand too much.

Q What did he do in making his inspection?

A He runs around looking at it, and he okays it. If he wants another wire or antoher chock, he tells us because when he okays this then I have to take all the men out, and once you take the men out they're not going to be back again. It's pretty tough for them to go back. So he okays it, and I have to okay the men to get out.

Q How tight do you take up on the turnbuckles?

A Well, you take out all the slack there is.

Just take out up to the tensing, that's all.

Q Do you arrange the lashings so that if there is any space tween the opposing screws in the body of the -- what do you call that?

A The worm.

Q What's that?

A The worm in the turnbuckle.

Q Yes.

A We give them enough so that they can turn the whole turnbuckle. We usually turn in about two inches, three inches.

Q Leaving what distance then between the two oppsing screws?

A 10 to 12 inches.

Q Distance between the oppsoing screwa?

A Easy.

Q How do you get it arranged that way? Can you describe that for us?

A We make a loop on the fixed object. We put the turnbuckle in. Then we make a loop or what we call -- we call everything a loop. Some of it is long wire, so that's a loop. You pull, after you've got the fixed wire attached to the fixed object. You put yourturnbuckle in. Then you put the wire to the skin or padeye, and then you put it

through your turnbuckle and you pull all the slack out. Then you make fast with a clip.

After you've got the clips put on, then you tighten up your turnbuckle. You take the slack out until you finish the whole machine, or case, or whatever you've got. Then you go around, you take and you make it all tight, just tight enough, you know, and that's it.

MR. MC HUGH: No further questions.

THE COURT: You will have some examination, I am sure.

MR ALLEN: Your Honor, I was even going to ask for a little extra time because you can see I've got to study that model if I am going to cut short my examination to any reasonable interval.

THE COURT: What have we got on for this afternoon?

MR. MC HUGH: I have two, and possibly three more witnesses.

THE COURT: Are they of length?

MR. MC HUGH: I am afraid one will be of considerable length. The others, one will be very, very short, I would think, and then I haven't made up my mind on the third.

THE COURT: So you may have to use some of

Mr. D'Ambrosio, your Honor, to put on a very short witness who is sitting here? Mr. Allen has consented to the interruption before he commences his cross examination.

THE COURT: Very good.

J E R O M E P . S C U L L Y , called as a witness, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MC HUGH:

Q By whom are you employed, Mr. Scully?

A National Cargo Bureau, Incorporated.

Q In what capacity?

A Vice President and Secretary.

Q How long have you been so employed?

A I have been employed -- it is my 17th year.

Q 17?

A Yes.

Q What is the National Cargo Bureau, Incorporated?

A The National Cargo Bureau is a non-profit membership organization that conducts marine surveys.

Q For whose account?

A For the account of anyone in the industry who would want our service.

Q You say non-profit.

What type of membership do you have?

A Our membership is composed of steamship management-officials, marine underwriting-officials, U.S. government agencies. That is primarily what it is. It is kind of a tripartite organization.

Q Do you have possession of the records of the Bureau?

A Yes, I have.

Q Did you receive from my office a subpoena to produce certain records in connection with this litigation?

A Yes, I did.

Q Specifically records with respect to an inspection by Bureau representatives of the SS Amazonia in January of 1971?

A Yes.

Q Did you bring with you such records?

A Yes, I did.

Q From those records can you tell us whether a representative of the Bureau attended the Amazonia at New York in January of 1971?

A Yes.

Q Were any certificates issued in connection with the representatives' attendance?

A Yes.

Q Do you have the certificates?

A Yes, I do.

Q May I have them, please?

A Yes (handing).

Q I hand you two certificates.

Can you identify them for the Court, please?

A Yes. The first one is serial No. A69957 issued in New York dated January 18, 1971. It was issued to T.J. Stevenson and Company on behalf of Netumar Lines. It is signed by H. -- G. DeCastro, who was a surveyor in the Port of New York at that time.

The other certificate is S28451, New York, dated January 18, 1971, issued to the same parties with the same surveyor, DeCastro.

Q What is the difference in the two certificates?

A The A certificate was issued for cargo stowed under deck and the S certificate is issued for specific cargo on deck as indicated on the certificates.

MR. MC HUGH: I offer the certificates in evidence, your Honor.

MR. ALLEN: No objection.

(Exhibit 97 received in evidence.)

MR. MC HUGH: No further questions, your Honor.

CROSS EXAMINATION

BY MR. ALLEN:

Q You are in charge of records, you don't go down on the pier, do you?

A No, I don't.

Q The surveyors attend the ship and go on board when they are able with respect to a particular loading or discharge; isn't that so?

A That is correct.

Q They don't necessarily stay on board all the time, they work several ships, don't they?

A That is correct.

Q Yes. They don't necessarily stay until the end of the loading period before the ship sails, do they?

A It is supposed to be checked before the ship sails.

Q The certificate attests to no more than what shows on the certificate; isn't that right?

A Yes.

Q You say the S certificate refers to on-deck cargo?

A That is correct.

Q And to nothing else?

A Well, the specific cargo mentioned in the stock.

Q The specific cargo?

A Right, which happened to be on deck.

Q The on-deck cargo that he looked at was one case of Red Label and one container of Red Label and nine containers; is that correct?

A Whatever appears on the certificate.

Q Just check me.

A That is correct.

Q All right.

The other certificate refers to the below-deck stowage, and I assume the import of this is that whatever cargo he saw below deck he felt to be properly stowed, right?

A That is correct.

Q Will you read for me all the cargo which that the surveyor says he saw in that under-deck certificate.

A Steel plates, bales of synthetic rubber, case heavy lift machinery, steel sheets, unboxed tractors, pieces of buckets, copper wire bars, drums, chemicals, containers, general cargo.

Q There is a date of January 18 on that certificate but it does not give any time; is that right?

A No, that is correct.

Q If there were heavy lift tractors, would they be specifically mentioned if the surveyor saw them?

A I'm not too close to that. I'm not sure about that. I would say yes, chances are they would.

THE COURT: There is a statement, unboxed tractors.

MR. ALLEN: There are other unboxed tractors on board this ship besides these two Terexes.

THE COURT: I see. Do we have any proof of that?

MR. ALLEN: It would show in the stowage plan.

MR. MC HUGH: The point I make, it says unboxed tractors, plural. There were other unboxed tractors on crawler treads in different areas of the ship.

THE COURT: There is some issue being raised as to whether the Terexes are what are referred to in 9 .

MR. MC HUGH: Yes, I concede the certificate does not speak of a brand name Terex which is a General Motors tradename. It does say unboxed tractors.

THE COURT: Plural without limitation.

MR. MC HUGH: Without limitation, precisely.

MR. ALLEN: There are also people named who conducted that survey who can say what they saw or did not see.

MR. MC HUGH: All right.

REDIRECT EXAMINATION

BY MR. MC HUGH:

Q. Mr. DeCastro is the representative of the National Cargo Bureau who conducted the surveys that resulted in the issuance of the certificates now in evidence?

A Yes.

Q Is he employed by National Cargo Bureau at the present time?

A No, he's not.

Q Did my office inquire of your office for his present address?

A Yes.

Q What did you advise?

A We advised of an address we had on record at the time of his termination of employment.

Q And you knew what about his present whereabouts?

A We don't know where he is.

MR. MC HUGH: Thank you. That is all.

RECROSS EXAMINATION

BY MR. ALLEN:

Q You saw he gave his last known address?

A I believe so, if I can refer to the letter.

REDIRECT EXAMINATION

BY MR. MC HUGH:

Q I hand you a letter from your organization to my office.

Does that refresh your recollection?

A Yes.

Q What is the fact concerning Mr. DeCastro?

A We advise you that he was no longer employed with us and we don't know his present address.

Q Thank you. That is all.

MR. ALLEN: I have no further questions.

THE COURT: Mr. Scully, when you read the description which is on the second sheet of this Exhibit 97, that is obviously intended by somebody at sometime to be able to tie it into some specific items; is that right?

THE WITNESS: Well, I don't think it is designed to cover each and every individual item that is stowed on board the vessel.

THE COURT: What is the purpose --

THE WITNESS: As you see, it says, for example, steel plates, but it does not define what kind of steel plates.

THE COURT: Let me ask you this: Why does somebody order this certificate?

THE WITNESS: Our job is to assist the mate and the Master of the vessel to see that the cargo is properly secured.

THE COURT: This is issued at the vessel's request so that they have some assurance that the people loading their vessel have done a proper job; is that right?

THE WITNESS: That is right, as it came under the observation of the surveyor.

THE COURT: For example, the words "general cargo" there, that could mean almost anything?

THE WITNESS: Yes.

THE COURT: If the mate orders this certificate, and I take it the Netumar people do on every voyage; is that right?

THE WITNESS: I'm not able to answer that.

THE COURT: If somebody on the vessel orders the certificate, does he direct your man as to what he wants looked at? Does he say, will you check this hold or that hold or these items or that item? What is the practice?

THE WITNESS: In general for an A certificate, if we have the whole vessel under inspection, our surveyor would inspect it.

THE COURT: This is an A certificate, the second sheet?

THE WITNESS: Yes.

THE COURT: The practice with an A certificate is to look at the entire cargo?

THE WITNESS: That is correct.

THE COURT: It would be reasonable for someone reading that to assume that it referred to the entire cargo?

THE WITNESS: Yes, under-deck cargo.

THE COURT: Under-deck cargo. All right. Thank

you very much. Any questions that are provoked by my questions?

RECROSS EXAMINATION

BY MR. ALLEN:

Q These certificates are primarily for insurance purposes, aren't they? In other words, the people who employ you want the certificate, they don't hire you to do a particular job so much as to provide them with a certificate that someone has looked to see that the Red Label cargo is properly stowed and things like that?

A In accordance with Coast Guard regulations.

Q Thank you.

MR. MC HUGH: I have a couple in view of that.

REDIRECT EXAMINATION

BY MR. MC HUGH:

Q Mr. Allen was referring to Red Label cargo.

Do you have an idea of what Red Label cargo means?

A I know it is a cargo that is listed in the Code of Federal Regulations as a dangerous cargo put out by the U.S. Coast Guard.

Q Red Label has to be put on a container --

A It has certain restrictions and stowage on the vessel.

Q With respect to general cargo, which is a generic

term, I gather from your responses to his Honor's questions that your representatives, if requested, inspect the whole ship and issue a certificate?

A That is correct.

Q Certifying that in his judgment the ship has been stowed and secured in accordance with the Bureau's standards or recommendations?

A That is correct.

Q Does the Bureau in fact make standards and recommendations as to proper stowage of cargo aboard vessels?

A Yes, we do. We don't have any written standards, but we have just verbal recommendations.

Q Communicated to your representatives who are active surveyors?

A That is correct.

MR. MC HUGH: That is all.

RECROSS EXAMINATION

BY MR. ALLEN:

Q Does your file contain any time records for Mr. DeCastro?

A Yes.

Q May I see them?

Perhaps if you can read this more quickly than I, can you tell me what it shows about his attendance on the

Amazonia?

A Commenced loading January 15, 1971. He was aboard at 1500. He was aboard on the 16th, January 16, 1971, and January --

Q Let me go back.

MR. MC HUGH: Let him finish.

A And January 18, 1971 at 1600.

Q All right.

On January 14 he was on board at 1500?

A No, the 15th.

Q He was on board at what time?

A 1500.

Q It does not say how long?

A No.

Q All right.

Then on the 16th?

A There is no time indicated.

Q And on the 17th?

A There is nothing indicated for the 17th at all.

Q On the 18th?

A 1600.

Q Just that he was on board at 1600?

A Yes.

MR. ALLEN: That is all.

THE CLERK: 98.

THE COURT: Nobody offered the model in evidence. I assume you are going to offer that.

MR. MC HUGH: I intended to.

MR. ALLEN: Let s give the model a number and give this a number and then we will know what we are talking about.

MR. MC HUGH: I move the model be received in evidence, your Honor.

ALLEN
~~THE COURT~~: I will ask your Honor to defer ruling on that. Let's identify it right now.

xxx (Model identified as Exhibit 98 for identif tion.)

THE COURT: It will certainly be used as an aid to the Court in conjunction with this witness' testimony and on that basis I will receive it.

xxx (Exhibit 98 received in evidence.)

MR. ALLEN: On that basis I will also offer 99.

MR. MC HUGH: No objection.

THE COURT: It will be received on the same basis.

xxx (Exhibit 99 received in evidence.)

Q To be sure I understand 98, is that the way you remember it was done or the way you now think you probably did it?

A That's the way it was done.

Q And in your opinion, I assume, that was an adequate shoring and lashing job for those pieces of equipment?

A Under them conditions, yes.

Q And by the same token, I think you would agree, wouldn't you, that if there was anything substantially less than what you have shown here that wouldn't be sufficient, would it?

A No. You could have less.

Q I beg your pardon?

A That's good enough.

Q Yes, but my question was if it is less than that it is not good enough, is it?

A I wouldn't say that.

Q I thought you just did say that. I asked you --

A I said that's good enough. It could be a little less and it is still good enough.

Q How much less?

A I couldn't tell you that. You could have a brace or one extra wire, do you know what I mean? Some of these here objects we use like twelve wires. Wherever we can hook extra wires we will put additional wires. But each tractor gets no less than eight wire. Sometimes we have fourteen

wires on one tractor.

Q Without looking at the model for a minute, just assume that it was done where the tractors were secured together, to each other, as you have them, and they were boxed off with 4 by 6 timbers and braced and shored off to the skin of the ship with 4 by 4 timbers, and the wire lashings were secured to these pad eyes that you have described with the same wire and lashups that you have arranged. Would that in itself be sufficient?

A Just to the pad eyes?

Q Yes.

A And no other place?

Q No other.

A No, that wouldn't be sufficient.

Q When did you first talk to a representative of Jersey Export or one of their lawyers about this case?

A About a year later, after this.

Q About a year after it happened?

A Yes.

Q Did you tell them at that time just the way you lashed and secured this cargo?

A That's right.

Q Was that Mr. Conroy you spoke to?

A Mr. Conroy.

Q You haven't changed your opinion in the meantime of what you did?

A No.

Q On 98, I don't want to pick it apart, but I think you described what you called a wedge.

Perhaps I better move this down to you a little closer. I am interested in what you described as wedging around the wheel, or something like that.

A You see, under here is a wedge to hold the wheel. This is supposed to be a wedge.

Q I see. In other words --

A I will take it apart and show you the wedge. It will take a minute. That way you will know what I am talking about.

Q You are too good. I really think if we can just tell the judge what we are looking at maybe we won't have to take it apart.

A No, it is just a matter of unhooking this here.

Here's the wedge here, and it also goes here. But this here is supposed to be here and here, but then I would complicate everything.

Q Let me ask you -- rather say for the record, the wedge is a piece of 4 by 4?

A 4 by 6. This is all 4 by 6. There is no 4 by 4s

on there.

Q The whole frame is 4 by 6s?

A Yes.

Q And the wedge comes underneath the piece that goes across in front of the wheels?

A The wedge is put in first when the tractor lands. We put the wedge in first.

Q Up against the wheel?

A Yes. Then we put the stringer. This wedge is tacked to the dunnage after it is landed so it don't move on this.

Q What is this built up area under the axle?

A This takes care of the axle. There is two, one on each side.

THE COURT: Mr. D'Ambrosio said he only had one because of the confines of the model. Usually he puts in two.

A That's to keep the weight on it. Then we drive a wedge through that goes under the axle, and that holds the weight of the machine.

Q That's the other wedge I was thinking about. In other words, you build the blocking up until it is almost to the axle and then you drive a wedge in there to make it a snug fit?

A Right.

Q The purpose of that is to catch the weight, I suppose, but is that so you can hold it down?

A Yes. When you lash down on the rubber tires you can keep turning that turnbuckle and the tire can get flat, flatter on the bottom, and you can keep going.

Q That's very essential, isn't it?

A Yes.

Q To have something rigid to pull against when you are pulling down?

A Right.

Q Were there any triangular chocks used on these wheels, triangular wood chocks?

A No.

Q None at all?

A I don't know what you mean.

Q Let me put it this way. You have seen them chock an airplane wheel, a little chock of wood or something like that, triangular shaped?

A Yes.

Q Or sometimes you do that, when you do automobiles, don't you sometimes chock the wheels?

A No.

Q Then forget that.

A We don't use triangular wood.

of the carpentry gang?

A Right.

Q Who was the foreman of the lashing gang?

A We have Vericello, but I am still in charge of Vericello, because I still do lashing, too.

Q But Vericello was the head man of the lashing group?

A Right.

Q Where he is today?

A I couldn't tell you.

Q But he did work for Jersey Export at that time?

A Yes.

Q I think you also testified after you finished your work the mate inspected it?

A Yes, sir.

Q You remember this personally?

A Yes, I remember the mate inspecting this.

Q Was anyone with the mate?

A No, he was alone.

Q Approximately what time of day was it when he made his inspection?

A I couldn't tell you. Maybe about 6 o'clock. Roughly now.

Q Roughly 6 o'clock?

A Right.

Q What did he do?

A He probably looked around. I don't know what he did.

Q You didn't particularly see whether he went down in the hold or not?

A He was down in the hold. So was I. So was my men.

Q Did you tell him that the entire hold, including the Terexes, was properly lashed and secured?

A No, I said, "This is it. Is it okay? Do you like it?" If it is okay, we get up, because they have to cover the hatch now.

Q Was it down to your satisfaction?

A Oh, yes, sir.

Q You also spoke about tightening the turnbuckles. Part of your job before you leave is to take up on those buckles until they are as tight as you can get them, wasn't it?

A Just to take the strain off. Tight as we can get my hand.

Q By hand? You don't use a wrench or stick of wood?

A We use a stick of wood.

Q As tight as you can do it with a stick of wood

for that extra force. That's part of the job to make them all tight, right?

A Yes.

Q You didn't need any special instructions on how to do this job, you know how to do it, don't you?

A Yes, sir.

Q Because that's what your company does?

A That's right.

Q Did you have any foreman supervising your work?

A Well, occasionally the superintendent of all the foremen, Mr. Montello, he would come around and check to see if we did it right.

Q Do you remember whether or not Mr. Montello checked this job?

A He was on the ship, he checked all around, he didn't tell me anything.

Q When was he on board?

A Every day.

Q I mean on Monday the 18th, that's the only day we are really interested in.

A He was there three or four times.

Q Why did he come so many times?

A Well, he was in the office quite a bit.

Q I am just talking about on the ship.

drove wedges to make it snug; is that right?

A That's right.

Q Do you remember, did the stevedore wheel this first tractor into place?

A No. He pushed it in as far as he could, and then he unhooked one wire that was in the front, and he hooked it up in the back end. He picked it up and swung it in. That's how they get it underneath.

Q Didn't you tell me one time that the stevedores always like to use the wheels and sometimes jump up on the machine and cut the wires to the gears and brakes so that they can wheel them in and save labor?

A Sometimes they probably do that.

Q You told me that, didn't you?

A I don't remember.

Q You and I had a conversation some months ago, didn't we?

A Yes.

Q And didn't you tell me that at that time?

A I don't recall telling you that.

Q If I say I recall it you wouldn't deny it, would you?

A I could.

Q Or would you?

A Would it?

Q Yes.

A Tell me if I did.

Q Yes, you did.

A I will deny it.

MR. MC HUGH: If that doesn't put the fact-finder in the middle, I don't know what it does.

A You see, I recall meeting you once before.

Q You say there were no triangular chocks at the wheels as such, as wheel chocks?

A That's right.

Q On these vertical pieces against the general cargo, were they secured at the top to keep them from moving at the top or did you just depend on pressure against the cargo?

A Well now, if it is a leg --

Q I am asking you just about this general cargo on the port side.

A No, on the port side, no, they are tied in with dunnage after you put them up, and they are nailed to the fence.

Q Is the top of that leg secured to the ship in any fashion?

A No.

A We had to have this hatch closed.

Q All I'm saying is you had enough time to do whatever you wanted to do before you called the mate in and said, "We're ready for your inspection"?

A The mate is usually here. The crew wants to close this hatch, and I tell them, "Go get the mate," and he comes down and checks it because we have to get out.

Q All I'm asking is you had enough time to do your job, didn't you?

A Yes. In this hatch.

Q You knew, did you not, that the smaller rings with the link attached to them were not strong enough for heavy lift cargo, didn't you?

A No.

Q You didn't?

A They are not as strong as the pad eye alongside of it.

Q If you have a choice of two you go for the larger, stronger pad eye, don't you?

A We did.

Q And you would agree, wouldn't you, that under union rules that work has to be done by your crew of union labor and not by the ship's force or the ship's officers, right?

A That's right.

Q When we had our conversation that was on September 23, wasn't it?

A I guess so.

Q When we had our conversation didn't you tell me that in your opinion the tractors chewed into the wooden shoring until one of those pieces broke or gave way and that the wires then failed to hold because they were secured to weak and wasted securing rings which were welded to the ship's structure? Didn't you tell me that in your own words?

A No. I could swear that I didn't tell you.

Q Didn't you tell me at that same time that you never leave the ship until the mate has signed for the men, materials, and for a satisfactory job?

A That's right.

Q You told me that, didn't you?

A The super.

Q What?

A The superintendent. On these ships the mate never signs. It is the superintendent of the pier that signs. From Netumar.

Q Have we got a signed receipt from the superintendent for this ship-

A You probably have, if you look up the records.

They sign for our daily work, and when they sign for our daily work that's okaying the ship.

Q Don't you remember that when I interviewed you I told I told you that I thought that the paper was in both wings, and you didn't contradict me at that time, did you?

A Well, I tell you. All ou were asking me is how you shore and chock the tractors, as far as I remember, and I distinctly remember, and I made you sketches of how it was done, and that's all that was asked of me, because you were only three three-quarters to an hour.

Q Let me ask you t is. Do you remember, or do you deny -- let me ask you this. Do you deny that I told you that I thought the paper was in both wings alongside the Terexes?

A I don't remember that. You never told me.

Q I never told you?

A Absolutely.

Q And so you would also deny that in response to that statement you said, "In that event the shoring pieces would be laid cut on the deck toward the paper"?

A No.

Q You didn't say that?

A No.

Q You do remember telling me that the men don't

like to use the second-hand wire, don't you?

A I might have.

Q Didn't you explain to me how it gets rusty and frayed and sometimes cuts through the gloves?

A I don't recall.

Q Do you recall telling me that sometimes a mate will give you a bucket full of rusty clips and as soon as he turns his back they go overboard?

A I might have. And then again I don't -- I will say I didn't tell you that.

Q You want to change your answer?

A Yes, yes, I'll change it.

Q All right. And did you tell me that when you use several clips you place them in opposite directions, up or down, or whatever way you want to describe it?

A No.

MR. ALLEN: That's all.

THE WITNESS: Could I say one thing?

THE COURT: In expanding on an answer?

THE WITNESS: Yes.

THE COURT: Go ahead.

THE WITNESS: When he came over he asked me about carpenter work, not lashing. I never told him anything about lashing.

MR. ALLEN: I am sorry, I didn't hear that.

THE COURT: Read it back.

(Record read.)

THE WITNESS: Only carpenter work. I drew you all the sketches pertaining to carpenter work.

MR. ALLEN: Just one further question.

Q When I came down to see you at your home in Brooklyn, I told you exactly who I was and who I represented, didn't I?

A No, you just told me you are Mr. Allen, and Mr. Conroy said it was okay for you to come to see me.

Q Didn't you tell me when I first called you up that Mr. Conroy said you were not to speak to anybody else about this case?

A I said that Mr. Conroy said that a Mr. Allen will get in touch with you and it is up to yourself whether you want to see him or not.

Q So you knew I was on the opposite side, didn't you?

A I really don't know who is on the opposite side, to tell you the truth, until --

Q Mr. Conroy warned you I might call you, didn't he?

A Until I came in court Tuesday. I even asked you whose side were you on. I don't care if these people lose

or you lose. I ain't getting nothing out of this. I'm sorry I even got involved in this here, to be frank with you.

Q Please, please, I am trying to get a question in.

A Do you know why, because I was only talking to you about three-quarters of an hour at home, right? That's about all the time.

Q I won't dispute you about the time.

A How in the world could I tell you all these things in three-quarters of an hour and I wasn't feeling good, I was just being nice to you.

Q You were very agreeable --

A And I was being nice to Mr. Conroy in going up to his office.

Q Isn't it correct Mr. Conroy had warned you I might try to get in touch with you?

A No, he told me to use my own judgment. He said, Mr. Allen wants to see you. I asked him who you were. And I just recognized you the later part of yesterday, who you were.

MR. ALLEN: All right, I won't pursue it.

THE COURT: Redirect examination.

REDIRECT EXAMINATION

BY MR. MC HUGH:

Q Referring to the sketch that you drew on the

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1 mdmch Wheeler-direct

WILLIAM WHEELER, called as a witness by New Jersey Export Marine Carpenters, Inc., being first duly sworn, testified as follows:

MR. McHUGH: Your Honor has heard Mr. Wheeler's qualifications only last week, but I suppose for the record we have to go through it again.

DIRECT EXAMINATION

BY MR. McHUGH:

Q What is your occupation?

A Presently employed as a marine surveyor and marine consultant.

Q Would you give us your education and training that qualifies you?

A Graduated high school in 1935, started to sea as an ordinary seaman. I remained at sea for about a year and a half.

I came ashore and worked as a rigger in construction work. From 1939 I was enrolled in the Maritime Commission's Cadet Training Program, and I was graduated from that course of training with a third officer's license. That is now known as the United States Merchant Marine Academy.

I sailed as third officer, second officer, chief officer, and in 1945 I qualified and passed the examination

as master for American flag vessels, any waters, any tonnage.

I sailed as master from 1945 until 1948, when in 1948 I reverted back to chief mate.

In 1950, '51, I was called to active duty with the navy.

At the end of 1951 I came back to merchant shipping as chief officer.

Q What were your naval duties?

A Navigator on amphibious attack transport.

Q What rank did you hold?

A Lieutenant while on active service.

I came back as chief officer on passenger ships, and at the end of 1952 I came ashore and worked as a stevedoring superintendent here in New York.

I went back to sea briefly as master in 1955, and at the end of that voyage I came into my present activity as a marine surveyor and a marine consultant.

Up until I was in partners with another, an engineer, and we had offices in New York, but since 1972 I have been completely independent and I work out of my home.

Q Self-employed?

A Self-employed.

Q Would you tell us just a bit more, if you will,

about your activities while serving as a stevedoring superintendent?

A As a stevedoring superintendent we planned in conjunction with the shipping company, the ship owner and his representatives, we planned the loading of the various cargos, we hired the labor, and we provided the equipment to carry out the planned stowage of the cargo.

In the reverse, of course, in discharging operations.

Q During the course of your activities as both a licensed merchant officer aborad vessels and as a master and a stevedoring superintendent, did you have occasion to both prepare and read stowage plans?

A Yes, sir, I did.

Q Is there a universal or generally accepted system for the preparation of a stowage plan?

A Yes, there is.

Q Why is that?

A So that they can be understood by the various people interested in the parts of the world in which the ship is trading.

Q I show you, Mr. Wheeler, Exhibit 42.

Have you seen this before, this exhibit?

A Yes, I have.

Q That is the New York stowage plan of a vessel called the Amazonia?

A Yes, sir.

Q Can you tell us, with respect to No. 2 tween deck, what the cargo was in the hold and where it was placed, based on Exhibit 42?

A Starting at the forward bulkhead the cargo was loaded at Baltimore and destined for Rio across the forward bulkhead, consisting of two 20-feet containers, 13 cases of general cargo weighing 6 ton, and 440 bags of rubber weighing 10 ton.

Immediately aft of that block of stowage was, on the square of the hatch and extending partly into the wing, a consignment of two unboxed tractors weighing 34,000 pounds each and two pieces of tractor parts weighing 3.2 ton, I believe. I can't really make it out.

There is immediately aft of the Baltimore-Rio cargo another case of Baltimore-Rio stowed, as it indicates here, in the starboard wing of the area.

Immediately aft of those two lots of cargo is the rolls of newsprint that were loaded at St. Johns, New Brunswick, for Rio. That newspaper stowage extended from the Baltimore case completely aft, all the way back to the after bulkhead. It was stowed across the square of

the hatch, the middle sections, the mid-lengths of the square of the hatch, and extended down on the port side from the Baltimore cargo to the St. Johns-Santos stowage, which was 660 bags of malt.

On the after end of the square of the hatch was St. Johns-Rio rolls of paper shifted from No. 1 tween deck, and there was 3 cases of machinery loaded at New York for Recife.

That is the entire cargo stowed in No. 2 tween deck.

Q With respect to the rolls of paper loaded at St. Johns, New Brunswick, did the forward edge of that stow extend across the entire width of the No. 2 tween deck space?

A Yes, sir.

Q From port to starboard?

A Yes, straight across.

Q Across the square of the hatch?

A Yes.

Q How is paper normally stowed?

A Paper, newsprint, I stowed on the head so that the cylindrical appearance of the paper is standing upright. The axis of the cylinder is upright. It's stowed tier on tier, one roll on top of the other, with no dunnage, and

A I opened the door.

Q What happened then?

A As I looked at the charred gasket a seaman, a Brazilian seaman,was in the area. I identified him as a sailor on the ship because of the paint-spotted clothes. I made a motion to him, "Que pasa?", "What happened?"

It's an international expression. He responded, "Feu," and he went like that (indicating).

MR. ALLEN: I object again.

Here we have an unidentified man he assumes to be a member of a crew who said something. This is something I have never encountered.

MR. McHUGH: I have encountered it through your testimony in this case.

THE COURT: All we know is this was someone garbed as a seaman who speaks Portuguese.

MR. McHUGH: I can't fight that.

THE COURT: I will not take that at this point.

Q Now, sir, is there anything else that you observed during your visit at Savannah?

A I inspected No. 1 and there was indications that the cargo had shifted originally as it had been stowed and had been restowed, because the tiers of newsprint had not been filled out, so I thought in my experience in the

original stowage those tiers would have been filled out.

THE COURT: Mr. McHugh, let me ask you this:

This gentleman taking Captain Wheeler around, Mr. Lewis, was he employed by the owners?

MR. McHUGH: He was employed by Ganley-Briggs to attend on behalf of Ganley-Briggs who were acting at the request of the owners or the owners' counsel, I don't know which.

MR. ALLEN: That's a fair statement.

THE COURT: If he had made a report in writing, could that report be called upon to be produced?

MR. McHUGH: It's been called for and it wasn't produced.

MR. ALLEN: Let me answer that, your Honor.

Only one survey report was made. That was the one that I offered. Mr. Canley's survey. I think it incorporates whatever Mr. Lewis may have told him of significance about going to Savannah.

I think your Honor should also know that Mr. Lewis lives in the New York area and could have been called at any time and never has been. I don't know why.

MR. McHUGH: That is not relevant.

THE COURT: Just because you could do something a different way does not affect the evidentiary problem of

Captain Wheeler, did you ask Mr. Lewis something about a fire?

A Yes, sir, I did.

Q What specifically did you ask him?

A I asked him, "When did the fire occur?"

Q What did he reply?

A He communicated to me that he had no knowledge of any fire. The exact words, I don't remember.

MR. McHUGH: It's not quite as meaningless as Mr. Allen's laughter might now indicate. We will see as we go along.

Q Now, Captain Wheeler, have you had an opportunity to look at the model prepared by Mr. D'Ambrozio which is in evidence?

A Yes, sir, I did.

Q Were you in court when Mr. D'Ambrozio testified?

A Yes, sir, I was.

Q Throughout all of his testimony?

A Yes, sir.

Q Assuming the Terex tractors were stowed in the manner portrayed on the model and described by Mr. D'Ambrozio in his testimony, would you say in your opinion as a licensed ship master and marine consultant having stevedoring experience that they were properly secured and

lashed?

A Yes, sir. The description that was given to me, it's my opinion that they were properly secured, that in essence they were lashed to the side of the ship.

Q Let me bring the exhibit over so you can demonstrate more specifically what you mean by that.

You say in essence they were lashed to the side of the ship?

A Yes, sir.

Q Can you demonstrate to the Court what you mean by that?

A That the tractor on the starboard side was actually placed in against the side of the ship; its weight was bearing against the structure that distributed its weight against the ribs of the ship, all these frames of the ship, and these were lashed down to the limber holes that were furnished by the type of construction of the ship.

The upper parts were also lashed to the sides of the ship, to the devices that were available to it. They were shored fore and aft so they couldn't move. Especially I would want them shored in the forward half because with the ship pitching in the seaway, that is internal force that tends it to pitch forward as the ship puts its nose

into the sea.

The first tractor was fastened to the second tractor and, where available, it was also braced and shored from solid material so it couldn't be lashed down but the lashes going up to the coamings provided the stability necessary because both these tractors, when they are being shipped, they are top-heavy, they are obviously top-heavy because in operations in the field, in the earth-moving operations, these large rubber tires are actually filled with non-corrosive antifreeze type of liquid that give the machine stability in the field. But for shipping purposes I always considered them top-heavy.

Q So that the wires running laterally or extending up the coamings are, in your view, stabilizing?

A They would be placed there for the purpose of stabilizing a top-heavy piece of equipment.

Q What is the greatest force one would expect to be exerted on the tractors when stowed in this position when the shop goes to sea?

A The rolling of the ship would generate inertial force on every commodity in the ship, particularly on wheeled vehicles that are placed in athwartship position. The inertial forces developed would depend on the load condition of the ship. If a ship is loaded with most of

10 seconds -- I mean complete, from port to starboard, back to port again -- the complete cycle taking 10 seconds, that would indicate satisfactory stability. Satisfactory stability is where from 2 to 5 feet GM.

Q Briefly, in connection with another subject, I think you mentioned stiff ships versus a tender ship.

A Yes.

Q I would like to ask you some questions about that now.

Can a ship be loaded, or should a ship be loaded with a certain amount of her total cargo in lower holds and balance in upper compartments?

A Yes, sir. The weight distribution, the vertical weight distribution in a ship is critical to the stability of the ship.

Q That is the rule?

A Lacking the stability booklet, if you didn't want to work it out, the rule of thumb is one-third of your total deadweight tonnage, the weight that the ship is supporting, one-third in the tween decks and two-thirds in the lower holds.

For this purpose, the deadweight includes the fuel oil that is usually located in the double bottom tanks.

Q From an examination of the stowage plan, were you

able to determine the quantity of the cargo in the Amazonia's lower compartments, as opposed to the upper compartments, when she departed New York?

A Yes, sir.

Q Was the distribution of her cargo in accordance with the rule that you have just announced?

A It was not, no, sir.

Q What was it?

A There was 900-some tons, slightly less than a thousand tons, in the tween deck, and on deck, and there was 2900 tons in the lower holds of cargo.

In addition to that, there was 1100 tons of fuel oil in the double bottom tanks.

Q You said 1100 tons of fuel oil in the tanks?

A Fuel oil, water and lube oil, yes, sir.

Q Did that make the Amazonia a stiff ship on sailing from New York?

A If she had abnormal stability in a light condition, loading the cargo in that manner would have made it a stiff ship; no doubt about it.

Q What effect does a stiff ship have on her cargo in a seaway?

A She rolls with the same -- she will respond to the same degree, but she will accomplish it with more of a snap

roll. She will do it in a shorter period of time.

Q What does a snap roll tend to do?

A A sudden change of direction. As the ship reaches the extreme to starboard, the change of direction as she rolls back, as the righting mobility into the ship takes effect, she is forced back more rapidly. The rate of change of direction is more rapid.

Q Does this put strain on the cargo?

A It puts greater inertial forces in the transverse plane on everything in the ship.

Q Are you familiar with the National Cargo Bureau?

A Yes, sir, I am.

Q What is the National Cargo Bureau?

A It's a non-profit organization supported by the shipping indsutry for the purposes of enforcing and ascertaining that cargos are loaded properly.

MR. ALLEN: I object to this witness describing National Cargo Bureau. We have already had a witness from that office. As a matter of fact, I am calling him back this afternoon, so I don't think he has to get into it.

Q As master of vessels, have you had occasion to have National Cargo Bureau come aboard and inspect stows?

A Yes, sir, I have.

Q Did it include lashing?

Q By reference to the stowage plan, do you know whether there were any heavy lifts stowed in No. 1 hold of the Amazonia?

A (No response.)

Q Do you want the cargo plan?

A I would like to look at it with that specifically in mind.

A There does not appear to be any heavy lift stowed in either No.1 tween deck or No. 2.

Q Bearing in mind the paper in No. 1 shifted, are you able to make any conclusion as to whether paper in No. 2 or heavy lifts in No. 2 shifted first?

A No, sir, I couldn't say which one shifted first.

Q Do you believe anybody could?

A No one could say which one shifted first, unless someone happened to be down there at the time.

Q Now assume that paper stowed in No. 2 in the manner you have described as demonstrated from the cargo plan shifted. What effect would it have on the lashing and the blocking, bracing, and chocking of the heavy lifts stowed forward of the paper?

A 1600 pound rolls of newsprint flying around or rolling around in a ship working violently in a seaway would effectively knock out the shorings of those heavy

lifts, and then would proceed to work on the lashings of those heavy lifts, and the heavy lifts, I would expect, would come adrift, would come loose, during that period.

Q What weight did you assume that the paper rolls had when you gave your answer to the last question?

A If they are conventional rolls of newsprint they weigh 1600 pounds apiece. I have handled many of them for the New YorkDaily News and New York Times. It comes into New York.

Q From where?

A The ship brings them in from Baie Kamo, Canada, and the Beawater organization brings them in for the New York Times.

Q Have you seen pictures of the newsprint stored aboard the Amazonia?

A Yes, sir, I have.

Q Is that newsprint similar to what you have been describing here?

A Yes, sir.

Q Mr. Keeler said that those rolls weighed 1204 pounds, I believe. Would you quarrel with that?

A Not really, because they could be smaller rolls of paper, but a typical roll of newsprint for the Port of

MR. McHUGH: That response to my question is in doubt.

Any way, I take it as a response.

Q Captain Wheeler, you indicated in your visual inspection of the side of the vessel and the area of No. 2, especially on the starboard side, that you formed the conclusion that severe pounding for a matter of hours had been suffered by the vessel before the shell plating was punctured.

A That's right. It appeared to have taken hours.

Q If, indeed, that pounding had occurred over that period of time, would one expect it to be heard by the vessel's crew?

A Yes, you would expect it to be heard.

Q If that was, in fact, pounding and, in fact, heard, one would expect it to be found as an entry in the log?

A Yes, you would expect to find an entry to that effect.

Q Captain Wheeler, assume that the vessel had 170 tons of Diesel Fuel, 688 tons of heavy fuel and fuel tanks of a capacity of 540-some odd tons, where would the vessel store the excess tonnage over that which the fuel tanks could accomoodate?

A The pounding marks under that plate would be under the plate. There might be some in here that I can't see again on the photograph.

Q The plate was all installed when you saw this ship, wasn't it?

A It was.

Q Whatever pounding marks that you say you saw would have to be on either one of those two pictures, wouldn't it?

A It's there, but you can't see it because of the angle, because of the camera angles.

Q I see.

Do you say that it is inconceivable that one of these 15-ton tractors could be loose from its securing devices and on a particular roll of the ship not go all the way across and punch through in one motion? You say that couldn't happen?

A No, I didn't say that couldn't happen.

Q All right. In other words, as I gather it, you say that it could have happened that way or it could have been a series of poundings?

A If it happened at the one shot, then the water would immediately come in and everything -- the motion of everything in that compartment would tend to be dampened

engineer going to sea.

Q All right.

From that am I correct that you are speculating that this may have caused or contributed to a fire on board the vessel?

A I said there is two things required for a fire. Fuel and ignition. That is the two things that are required for fire.

Q Can't --

A That would provide the fuel for the fire.

Q In other words, you are saying here is a possible fuel source if there was a fire on board.

A All you need is ignition.

Q All right.

Did you have any theory on ignition?

A Two possibilities.

Q What were they?

A One was the fact that this is a resistor house that is on deck in that area, an electrical resistor. If the current is left on, they will overheat and get cherry red hot.

The other is that there was a photograph showing oxygen, acetylene bottles on the dock amongst the debris that was put on the dock at Bermuda. Oil in the

presence of free oxygen -- if you had an acetylene valve on an oxygen bottle, oil in the presence of oxygen isnites, no spark needed.

Q You don't know whether those bottles were part of the shoreside equipment in the picture you saw or whether they came off the ship, do you?

A I don't know. They appeared to be part of the debris.

MR. ALLEN: I move that the last part of the answer be stricken.

Q You don't know?

A I don't know.

Q All right. Let's take the resistor house.

Normally at sea that door is closed and dogged down, isn't it?

A In good practice it is, yes, sir.

Q All right. You saw this photograph, Exhibit 30. Is that the door you are talking about?

A This is the door, yes, sir.

Q All right.

You saw some burn marks on that?

A I saw some fire marks, flame marks at the bottom of the door. I saw some welding that had been done around the six dogs that are on there, the hinges appear to

be bright and new steel, no welding marks on the hinges.

Q Did you make any inquiry as to how that door got there or why it appeared in that condition?

A I didn't, no.

Q You didn't even ask Mr. Lindsey?

A I pointed it out to who I was working for.

Q I mean, did you ask?

A I never spoke to Mr. Lindsey.

Q Did anybody give you any information --

MR. MC HUGH: This was at Bermuda. Mr. Wheeler was not at Bermuda.

Q Did anybody at any time give you any information on how that door got in that condition?

A The picture speaks for itself. The picture is out on the dock.

Q I am not quarreling with you there. It wouldn't do any good.

You see that door. Would it be a valid explanation as a fairminded person that if that door had been jammed by some deck cargo that ran into it so that it had to be burned loose, wouldn't that be a possible explanation of the cond-tion in which you see that door in the photograph?

A If the photograph showed a deformed door, that

had shifted, had been restowed.

A There was some interrupted tiers or rows of newsprint that I saw. That indicated to me that --

Q Did you see anything else?

A I saw some containers that had been lashed in the square of the hatch at No. 1. I saw -- I don't recall anything else noteworthy, any other noteworthy item.

Q What did you see about the condition of the containers?

A That they were secured, that they were lashed in the square of the hatch.

Q The thing that you saw in No. 1 that attracted your attention was that some of the rolls of paper were not in an even line?

A Appeared to have shifted and have been restowed.

Q What ev idence was there that they had shifted and been restowed that you saw?

A That they were not -- they didn't appear as they would appear to an experienced stevedore as for being in their original position. There was interrupted rows of paper as if they were stowed without the benefit of a forklift truck at Bermuda.

:nd 2B

Q You think this may have been done at Bermuda?

A Some of the resecuring of the cargo -- Mr. Sheriff said cargo broke adrift in No. 1. Mr.Ganley said cargo broke adrift at No. 1, and it was resecured.

Q I am asking what you saw.

A I saw evidence to confirm it.

Q What evidence of resecuring did you see?

A That some fencing was done at No. 1, that some wires were streamed across in No. 1 tween deck.

Q How did you know that that had not been there originally?

A Because they said cargo had shifted in there, and I got there later, a month later, as you said.

Q I don't want to cut you short, but you are basing it on the assumption that they said it had shifted and you saw it secured, so you assumed all this happened?

A What I saw confirmed in my mind that it had in fact shifted as they indicated in their reports.

Q On the basis of what you just described to me?

A Yes.

Q Nothing else?

A What I saw.

Q Nothing else?

A Nothing else. Their reports.

Q Did youmake any calculations regarding the GM or metacentric height of this particular ship on this voyage we are talking about?

A No, sir, the necessary information wasn't made available.

Q Would you agree when you are at sea you can tell whether a ship is stiff or tender just by sort of timing the roll as you ride it?

A Timing it with a stop watch or other device, yes. You time your roll.

Q That tells you right away?

A That gives you a measure of the ship's stability.

Q So an experienced navigator standing on the bridge of that ship and experiencing the roll could tell whether she was stiff or tender, couldn't he?

A That's right.

Q And even in your rough calculations which you say you did in your head, you say you didn't do any figures, you used a sort of a rough formula,do you recall whether you assumed there was any deck cargo?

A The cargo plan shows 96 tons of deck cargo.

Q You assumed 96 tons?

A Of course,

Q And the cargo plan doesn't show where all the

Q Let's see if we can get together on some basic principles. When you are securing a heavy piece of cargo in a ship the idea is to immobilize it, to fasten it as securely as you can to some part of the steel structure of the ship. Isn't that so?

A In general,yes, sir.

Q All right. And all other things being equal we find it best to hold the piece down to the deck on which it is sitting because then you have gravity working for you, too, isn't that right?

A If there are devices there that you can do that, yes, sir, you attempt to do that.

Q That is the first thing you try to do, isn't it, to hold it right down to the deck?

A It depends on the circumstances. If you don't have it there you don't try to do it.

Q I haven't given you any circumstances yet. I am talking in general principles.

A In general, yes, that is what I said.

Q All right. And you also feel that if you can do that it is better to bring the piece right in against the side of the ship, too?

A If you have got sufficient securing devices you c lash it down anyplace you want. That is what they do with

airplanes on the flight deck of a carrier, just lash them down in the high wind.

Q I realize that.

A No chocks, no braces, just wires.

Q But I am saying if you have the ability to put the machine up against the side of the ship, is that better?

A When you don't have the fastenings that is a way of accomplishing satisfactory securing.

Q You testified in the Farida, didn't you?

A Yes, sir, I did.

Q And you condemned that stowage there, didn't you?

A The stowage in the Farida?

Yes.

A I didn't condemn it, I criticized it. I wasn't out to the side of the ship. It was in the square of a refrigerated compartment.

Q You said it should be brought out to the side of the ship?

A I said if I was presented with the problem a possible solution would be to put it out to the side of the ship, yes.

Q Here is the stowage Plan 42. Have you got the official copy? Maybe you can read this one.

steel casing, and you would put -- where you have such a configuration you shore up both sides of the axle. If you didn't have a drive unit in the back you could put one pedestal like this machine apparently doesn't have a differential, but you put that there and expect in principle it is right.

Q On each machine you would build up four of these areas with wedges?

A Because you have four wheels, yes.

Q After you build up within a few inches with only the space of a few inches left you send a man in with a hammer and he uses a hammer to make the wedges tight?

A You send him in with a mall, or you use a 4 x 6 as a ram and drive the wedge in as tight as you can.

Q The idea is that tractor has to have its weight resting on this block, right?

A In major part, yes, sir.

Q A better way, a surer way, is to jack up the axle and then drop it down on the cribbing, isn't it?

A In the square of the hatch you don't have to jack it up, you lift it up with the shipping boom, if you want.

Q In any event, maybe that is easier, but the idea is if you lift it up and put the blocking underneath

then you are not worried about whether the wedge is driven in all the way or not, you know it is resting on the block then, don't you?

A You would know it, yes. Whether it would be worth all that trouble I don't know.

Q Then I think you said that having got these --

A You know it when the wedge is in there, too. Don't lose sight of that. When you drive a wedge in there you know it.

Q Who knows?

A The man who drives it in.

Q Part of the reason for that is that if you start to pull down on these rubber tires you don't get any real surface to bear against, do you?

A That is partly the reason, yes.

Q Isn't that the main reason?

A As far as security of the piece in place, yes, sir.

Q YOu want to pull it right down against this solid block of wood or blocks?

A You want to prohibit the inertial force of the ship coming up under it in a heavy sea from compressing the air in the tire. As long as you have the blocking on it, the ship -- the machine and the ship's deck can't

come any closer together due to the inertial forces of the ship working in a heavy sea.

Q Conversely, if you do have it so secured so that there is this up and down motion you are eventually going to be in trouble, aren't you, because then you are working against y our shoring and your wires?

A I didn't follow.

Q If you do have it so secured or so inadequately secured so that you get a bouncing motion on the tires then eventually it is going to work free of its lashings, isn't it?

A It might. It has more of a potential of working free, yes.

Q Sure. So you want to avoid that by every reasonable means possible?

A That is why you put the blocks and drive the wedges.

Q Then having done that, isn't it also good practice to put a tomming piece between the top of the deck and the maching itself?

A You could. This is one of the -- this one of the final steps you could take if you thought it necessary.

Q It is good practice, isn't it?

A You couldn't tom down the machine from the

(Pause)

Q One more series of questions.

I think the testimony is that on the after side, where this bracing ends, was a solid roll of paper right across the ship. Is that your understanding?

A Two high, yes, sir.

Q Yes, two high.

And I think you were asked about the possibility of the paper stow breaking loose first.

First, do you have anything to support that belief, that the paper came loose before the tractors?

A I didn't express that belief. I said I couldn't tell. No one can tell.

Q Let me ask you this:

If the paper is stowed straight across like that (indicating), and the ship rolls, it's just going to bear against paper, but it's when the ship pitches that the strain would be against this fencing or securing that holds in the paper; right?

A Yes, that's right.

Q Now, let's assume that some of these rolls of paper toppled forward.

On the bottom tier, that's easy; they would just fall over and be on their side. Is that right?

been put to a sea test?

A Yes, it had. The port of loading was St. Johns and the vessel had gone from St. Johns To Baltimore to her arrival at New York.

MR. ALLEN: No further questions.

MR. MC HUGH: No questions, your Honor.

THE COURT: Thank you very much.

(Witness excused.)

MR. ALLEN: Captain Ash.

W I L L I A M C H E S T E R A S H, called as a witness on rebuttal by the plaintiff, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. ALLEN:

Q What is your occupation?

A I am a marine consultant and master mariner.

Q Will you please give us briefly your professional background and experience?

A I started going to sea in 1927 as an ordinary seaman; 1928 became an able bodied seaman on examination and knowledge of duties of seamanship. In 1932, after four-odd years of experience in cargo vessels, tankers, passenger ships, and some yachts, I sat for my first third mate's license, any ship, any ocean.

in a program of building over a hundred diesel ships for the American merchant marine.

Q Captain, there is testimony in this case that while the Amazonia was still outside of Bermuda at some time she shifted from bunker to diesel oil. Does that indicate anything wrong with the ship?

A No, except this is a common practice,that these ships that have heavy bunker fuel or bunker C, also known as 600 W, keep that in the double bottoms, and in order to use it in their diesel engins they have to heat it with heating coils when they are in cold temperatures, they have to draw it up into their diffusers and in their heating coils, and then they have to break it down into a trans-diffuser that changes it into a lighter oil because it atomizes it, and then it is injected into the engines.

This is all a process that if it gets a little water in it may fail, it may stop it, so when they want to maneuver the ship for any purpose they go to the straight diesel oil which they carry a substantial amount of, and this can go right into the inj-ctors without any problems.

Q Captain, are you familiar with the terms of a stiff ship or a tender ship?

A Yes.

Q Is that sort of a loose reference to the meta-

centric height?

A Perhaps it can be better described. A stiff ship is like a toy that we had as a child, a celluloid doll with a lead bottom. You knock it down and it would whip right up; you knock it down the other way and it would whip right up. That's a stiff ship. The weight is essentially in the bottom, and when it rools it has a quick reaction on either side.

Whereas a tender ship will roll just as much, but it will be a slow and easy movement.

Q From your experience, can you say whether an experienced seaman on a ship with a given condition of stow can tell just by experiencing that roll whether the ship is stiff or tender or, happily, in between?

A He can tell just by the way the ship rolls in accordance with changes in the weather, besides his study of the cargo plan.

Q Captain, we have also had some testimony in this case about the tendency of lashing wire to stretch. Can you tell me, sir, would there be any appreciable stretch in a relatively short lead of a few feet?

A Your description of appreciable would vary as to the thickness of the wire, the tensile strength of the wire. A five-eighths inch wire with a breaking strain of 18 tons

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admitted this 3RD day of JANUARY 1977

McHugh, Heckman, Smith & Leonard
Attorneys for APPELLEE

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